



DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

TUAIRISC OIFIGIÚIL—*Neamhcheartaithe*
(OFFICIAL REPORT—*Unrevised*)

Gnó an tSeanaid - Business of Seanad	738
An tOrd Gnó - Order of Business	739
Commission of Investigation (Mother and Baby Homes and certain related Matters) Records, and another Matter, Bill 2020: Second Stage (Resumed)	760
Shannon Group: Motion (Resumed).	761
Standing Orders: Motion	765
Select Committee on the Withdrawal of the United Kingdom from the European Union: Motion	765
Regional Technical Colleges (Amendment) Bill 2017: Restoration to Order Paper	766
Business of Seanad.	766
Commission of Investigation (Mother and Baby Homes and certain related Matters) Records, and another Matter, Bill 2020: Committee and Remaining Stages	766

SEANAD ÉIREANN

Dé hAoine, 16 Deireadh Fómhair 2020

Friday, 16 October 2020

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

*Machnamh agus Paidir.
Reflection and Prayer.*

Gnó an tSeanaid - Business of Seanad

An Cathaoirleach: I draw Members' attention to a change in the procedure for divisions. At the meeting of the Committee on Procedure and Privileges during the week I outlined that there has been a slippage, as we all know, in the observance of social distancing in the Chamber and outside the Chamber. It was agreed by the groups and the Whips that when a division is called all Members in the Chamber will remain in their seats and not move around the Chamber, and that as Members enter the Chamber they would take a seat automatically. Senators will note there are 15 seats on the outside. Those seats should be taken by Members when they come into the Chamber. There are also 21 seats in the front and there are other seats available in the Gallery. In the event of more than 45 Members coming into the Chamber for a division, the surplus will be asked to leave, but the doors will not be locked. A roll-call vote will then be taken and the Senators on the outside will be asked to leave to allow the Senators outside the Chamber to come in to record their vote.

I note people are wearing masks and I welcome that but the social distancing rules apply to everybody equally. We have seen comments in the newspapers about what happened on budget day, and also comments by judges on what is happening in the courts and on officers of the courts as well. It is very difficult to keep observing the rules, but we must observe the rules. Let us be honest, the reality is there are 60 Members of the Seanad, and the chances that none of us will get Covid-19 are fairly limited. The chances are very low that one Member will not get Covid-19. The concern all Members have is the protection of their families, their communities and themselves. I do not want them to leave here and bring it home to their families and for somebody to get sick from this Chamber. There will be a lot of divisions today. I urge Members to observe the agreement that we came to at the Committee on Procedure and Privileges that we would observe social distancing for voting and outside this Chamber as well. I ask the Leader to outline the Order of Business.

An tOrd Gnó - Order of Business

Senator Regina Doherty: The Order of Business is No. 1, Commission of Investigation (Mother and Baby Homes and certain related Matters) Records, and another Matter, Bill 2020 – Second Stage, postponed division, to be taken on the conclusion of the Order of Business and Committee and Remaining Stages to be taken at 12 noon, or 15 minutes after the conclusion of No. 4, whichever is the later; No. 24, motion 5, re the Shannon Group, postponed division, to be taken on the conclusion of the postponed division on No. 1; No. 2, motion re the fifth report of the Seanad Committee on Procedure and Privileges, to be taken on the conclusion of the postponed division on No. 24, without debate; No. 3, motion re the establishment of the Seanad Special Select Committee on the Withdrawal of the United Kingdom from the European Union, to be taken on the conclusion of No. 2, without debate; No. 4, motion re restoration of Bill to the Order Paper, to be taken on the conclusion of No. 3, without debate.

Senator Fiona O'Loughlin: I was very saddened during the week, as I have no doubt all of us were, when we got an email from Senator Norris telling us that, sadly, Cathal Martin had passed away. During the debate on Senator Norris's Bill three weeks ago, he and Senator Casey spoke very passionately and compassionately about Cathal and the difficulties he had in life. On behalf of my grouping, I extend our deepest sympathy to Les, Linda, Ciaran and Holly, and acknowledge the incredible work Les has done on the National Screening Advisory Committee Bill. We commit to doing all that we can to support the Bill. It is very difficult for any one of us to lose any member of a family but to lose a child is especially traumatic. I cannot even begin to imagine the great sense of loss and grief the Martin family have. In saying that, I also think of all those who have lost children, especially during this national week of child loss and the fact that yesterday was Pregnancy and Child Loss Remembrance Day.

It is an incredibly difficult time for those who are pregnant. It is a very welcome event in people's lives but our thoughts go to those who perhaps have had miscarriages previously or who are at a difficult stage of pregnancy. In particular during the Covid crisis, we all want mothers and new babies to be as healthy as possible and to make sure every precaution is taken to ensure they do not contract Covid. However, I believe some leniency could be shown, especially at the time of the 20-week scan, in order that partners would be allowed to accompany pregnant women to hospital for the screening. I urge the Leader to take that on board. I am aware that it has been raised here previously.

The second issue I wish to raise concerns respect and loyalty. I am from Kildare and I am very close to the Defence Forces family and I have been involved with their issues for many years. The budget gave an extra €32 million to the Defence Forces, which was very important. Much of that will go to capital funding and €10.5 million is to support and improve pay and conditions but we still have a journey to go. In talking about respect and loyalty, I wish to speak about the respect and loyalty the State should show to those who have served this country both at home and abroad. That is most important. Senator Craughwell and others in the House raised the siege of Jadotville in 1961 in the Congo, five days of heroism and courage by 155 men, led by Commandant Quinlan. As we know, Commandant Quinlan recommended that 33 of these men would be awarded medals, five with the highest honour. Only eight of these 33 still survive. It is incumbent on the State to ensure that those eight individuals are awarded the medals and that the others are awarded posthumous medals. It would mean so much to their families and to their comrades in the Defence Forces. It would be beyond tragic if that did not happen.

The final issue I wish to raise today relates to justice, which is very important to all of us, as is ensuring that the justice system is fair and equal and that people do not lose out. While I am conscious that speaking about judges is a sensitive issue at the moment, I wish to-----

(Interruptions).

An Cathaoirleach: When Members are speaking in the Chamber, addressing the Leader and asking questions, or even during debate I ask others not to engage in conversation. If Members wish to engage in conversation they must step outside the Chamber.

Senator Fiona O’Loughlin: I draw the attention of the Leader to justice, which is hugely important to all of us, specifically District Court area 25, County Kildare. In this District Court we have twice the number of cases that are in many other jurisdictions, so we have a situation where cases dealing with important matters such as child custody, access and maintenance are not being heard. I know of a particular situation where 15 months after a child has been born a dad is still waiting for a court case to make sure he has access. That is completely wrong. There is an urgent need for another judge to be appointed to District Court area 25. I ask that the Leader would take that on board to ensure we can deal with the serious consequences that are evident in terms of the impact on the service users.

Senator Michael McDowell: First, I put on record that the leader of my group, Senator Boyhan, received the Order of Business for today at 10.19 a.m. It is not good enough that we should receive the proposed Order of Business so late in the day, with effectively 11 minutes to go before the Chamber assembled.

Second, I propose an amendment to the Order of Business, as proposed by the Leader, to provide that the words “and Remaining Stages” in respect of the Commission of Investigation (Mother and Baby Homes and certain related Matters) Records, and another Matter, Bill 2020 would be deleted from the Order of Business. In other words, I am proposing that only Committee Stage should proceed today. I understand that Senator Boyhan will second the amendment.

Third, the House has been told that the urgency of this matter arises from the fact that the commission will stand dissolved on 30 October and therefore arrangements in respect of its documentation would have to be made while it is still in existence. As I understand it, the situation is that the commission is now in a position to deliver its final report. The commission has a separate report based on the evidence it received from people who appeared before the confidential committee. The commission is anxious to deliver its final report by 30 October but it will need time. It cannot conclude its business before 30 October and will need an extension, partly because staff have been forced by the circumstances of the Covid emergency to work from home. There is a lot of administrative work in respect of the records of the commission that needs to be completed and will not be completed by 30 October. Therefore, it follows that the supposed urgency in respect of passing this legislation is unfounded because the commission needs and wants extra time. It should be given that extra time. Its final report will be out by 30 October, as I understand it and, depending on what this House does in respect of it, the confidential report will follow very quickly. However, the administrative work associated with dealing with all the records and preparing them to meet whatever legal requirements exist will take further time. We need extra time. The commission needs extra time. It is bogus to suggest that there is a hurry or an emergency requiring the passage of this legislation. I ask the Leader, therefore, to accept the amendment I am proposing and to proceed today only with Committee

Stage.

Senator Fintan Warfield: I was planning to propose an amendment to the Order of Business to reflect what Senator McDowell has just outlined. Perhaps he might allow us to second his proposal to take only Committee Stage today.

I remind the Leader of what she said on Thursday, 10 September:

I hear Members very loudly and clearly. I recall how standing here some six weeks ago I told the House that we would not do all Stages of Bills again and I find myself in a very uncomfortable position this week of having to ask Members to do it today. I give my solemn word today that except in the event of an emergency, [...] I will not accede to having all Stages of a Bill on a same day sitting in future. There is a caveat, we must find an agreement this afternoon at the Committee on Procedure and Privileges on how we run and order our business.

A commitment was given, however, that we would not railroad through all Stages and disrespect the process of this House. These Houses work best when the Government and Oireachtas work together and when all Stages are respected in the Seanad. The Oireachtas Library and Research Service has presented a very helpful infographic on the Stages of the legislation, laying out the process for all Members.

In my Second Stage contribution, I referred to the unprecedented engagement on this Bill with Members of House and other representatives. There is no doubt that the public is watching. It does not reflect well on this House if we concentrate all our critical examination into a few hours. Sinn Féin has submitted detailed amendments for Committee Stage and this will be the first opportunity to put them to the Minister. Many of the amendments reflect the deep alarm and concern of survivors of mother and baby homes over the direction and speed, in particular, of this Bill. I would like the Minister to have had more time to consider our amendments and determine whether he could compromise and come up with solutions of his own. The entire point of a Report Stage sitting is that Seanadóirí, the Minister and his officials can consider all amendments, even those defeated, in the period leading up to it. It has happened before that Ministers have considered Committee Stage amendments that were defeated and brought forward their own amendments. Without any period of reflection and engagement between Committee Stage and Report Stage, there is no chance at all of this happening. I appeal to Members, even those who may have supported the Bill this week, to allow time so we can fully listen and consider the concerns of the women and other survivors, who have themselves waited for so many years to get to this point. I appeal to the humanity of the Minister, Deputy O’Gorman, so he may do the right thing by the women and other survivors.

Senator Paul Gavan: Well said.

Senator Marie Sherlock: On behalf of the Labour Party, I indicate our support for the amendment to the Order of Business proposed by Senator McDowell. We, too, believe it is unnecessary and unjust to rush through this legislation today. I do not need to tell his House how important it is. As we all know, it has generated very intense personal interest. It concerns people’s lives. As Senator Warfield said, we need time to listen and to consider the 38 amendments tabled, some of which are very detailed and substantial. We very much hope that the proposed amendment to the Order of Business will be accepted today.

The other issue I wish to raise concerns the schools building programme of the Department

of Education and Skills. I wish to express my extreme frustration over the tortuous and unnecessarily protracted process involved in getting some schools built. I am dealing with the two schools at present. The first is Pelletstown Educate Together National School, Dublin 15. It is only a new school. When it was established, children were educated in a basement in their first year. In the second year, children had to be bussed to another school. There was no planning for a proper school building when the project was announced. It is a disgrace that the Department establishes schools but puts in place no proper buildings.

The second school I am dealing with is Bunscoil Coláiste Mhuire, Parnell Square. This is a school that had to move into temporary accommodation almost 30 years ago. Ten years ago, a commitment was made regarding a new school building. Management has been waiting ten years for a new school. It is absolutely shameful that the Department has dragged its heels despite the tremendous efforts of the príomhoide, the families, students and teachers. There is a wonderful school community but it is really up against the odds. There is plaster falling down from the ceilings. The playground is the car park for the teachers. Two major issues arise. First, the Department is wasting valuable money, amounting to €300,000 per year, on rent to a landlord when it could be used to build a school. Almost €3 million has been spent on rent over the past ten years, which is one third of the cost of the school. Second, at every stage of the building process an enormous campaign had to be launched to get the Government to act. This is clientelism at its worst. The Department needs to put in place a smooth, streamlined system for building schools. We should not have to have a campaign at every stage of delivery.

Senator Denis O'Donovan: I am glad to be back here again. I was very lonesome for all the Senators over the past few weeks but-----

An Cathaoirleach: We are glad the Senator is back.

Senator Denis O'Donovan: -----my medical people said not that I was a high-risk person but that I was an at-risk person. The last time I was able to come into this Chamber was when I served in Dáil Éireann. It is nice to be back here again. It brings back fond memories. I am probably one of the longest here. I was here in 1989. I am not sure how many Members other than Senator Norris have a longer record of penance and public service. I am not sure how well it was received or how well I did, but sin scéal eile.

I rise today primarily to express my extraordinary concern over the need for the likes of the Cathaoirleach, Ceann Comhairle and President of the High Court to issue instructions and a mandate to people in these surroundings, namely, the lawmakers, not necessarily in this Chamber but in the Oireachtas as a whole, and those who serve in our courts, the barristers and solicitors. I am technically still a solicitor but have not been practising for a while. I am concerned that a caution or warning had to be issued to barristers and solicitors in courts and Senators and Deputies on the basis that they are not fully complying with the instructions on social distancing and the regulations we are supposed to implement.

11 o'clock

We are the legislators and the people working in the courts implement the laws. It is hard for people, whether they are on peninsulas such as Sheep's Head, Beara, Mizen, where I live, Inishowen, Dingle, in the Cathaoirleach's county, or in Connemara hearing that they cannot see their children or grandchildren. It is a hard pill to swallow. Yet, we in this Chamber and the Lower House and in the courts refuse with disdain to accept the regulations imposed on us.

We should be ashamed of ourselves. Due to circumstances, this Chamber has sometimes sat on Monday and, because of the Dáil, we sometimes sit almost a five-day week. We are giving two fingers to the hewers of wood and the drawers of water. I do not say that in a derogatory or disparaging way but the ordinary working-class people are told they must do this and the pillars of society - that may be too strong a term because sometimes I do not think we are pillars - can do what we want. That is a bad message. If we want the ordinary working-class people of this country to come on board, by God, we are making a hash of it.

I will raise one other issue. I often wonder, putting on my legal hat, if much of the work in the Seanad and the Dáil could be done in another way. My esteemed colleague, Senator McDowell, who has experience in the courts, in both Chambers and as a Minister, asked if this Seanad could have sat with the 49 elected Members without the 11 nominated Members. That is an important point to reflect on. Can this Chamber and the other House do much of its work at a distance? We have Zoom. When I came in here in 1989, there was no Zoom, Twitter, Facebook or anything like that. We were lucky to have a paper and a pen and we have moved on a long way since. Should we look at that and, if necessary, put a test case, by way of State cases, to the High Court and the Supreme Court to see if we can operate in some way under the extraordinary circumstances we are in? This pandemic is going nowhere and will probably be here next year, and lives are at risk. Can we look at the possibility of sitting fewer days and of committee work being done at arm's length? I am sure the Supreme Court or the High Court would interpret the regulations as set out broadly and in a different way because of the circumstances we are in. That might be something the Chamber could reflect on.

An Cathaoirleach: I thank the Senator for his important contribution. I call Senator Seán Kyne.

Senator Seán Kyne: Gabhaim buíochas leis an gCathaoirleach. I raise the issue of services for people with disabilities and their families. Budget 2021 builds on the strong work of the previous Government and the former Minister, Finian McGrath, in this area. I commend the Government for securing additional resources and funding for disability services in this budget. The additional €100 million is much needed and very welcome. It will provide more targeted and tailored services for persons with disabilities, including school leavers, and help with the resumption of day services across the country. Most important, it will help continue the transition to a more inclusive, person-centred system that empowers people.

However, while the initial funding is welcome, we need to focus on how it is spent to ensure it achieves the greatest impact. We need to ensure that the recruitment of additional posts such as therapeutic services, including speech and language therapists, starts immediately and that such important personnel are not seconded to other areas of the health services such as contract tracing, which is happening at the moment. We need to ensure the additional training places and day service enhancements are introduced as soon as possible. We need to ensure disability service providers such as Ability West and the Brothers of Charity Services Ireland are fully resourced so they can carry out their vital services without obstacles or complications and we need to provide more support and respite for the families of persons with disabilities, parents, brothers, sisters and others. It is difficult for many of us to understand how challenging it can be to care for a person with a disability. It impacts on all aspects of family life, including on siblings. The challenge becomes greater as parents grow older and we have all met parents and made representations on behalf of many parents whose greatest concern is who will care for their loved ones or their children when they cannot, or when they die what will happen to their loved ones.

Will the Leader facilitate a special debate on disability services and the disability budget? This will involve a proper, reasoned debate to ensure every euro is spent appropriately for the greatest good. Will the Leader follow this up with the Minister for disability services?

Senator Victor Boyhan: I endorse everything that Senator McDowell said and I thank Senator Warfield for agreeing to second that. I would be happy to second it as that is a good gesture of support across the House and it makes a lot of sense. There are many people tuning in to us today, as there were the other day, on this important issue. Many people looking in are not familiar with the legislative process or the Oireachtas but they are concerned and troubled by what they have heard and seen in recent days.

I will make an appeal to the Leader. To come and have the Order of Business at 10.19 a.m. is not good enough. The responsibility is hers. She is the Leader of the House. With that job comes responsibility to the House and its Members. I will wait to hear the Leader's response. Is she going to suggest that the officials, the Cathaoirleach and the Leader's party members receive the first notification of the Order of Business at 10.19 a.m.? I have an answer to that but I will listen to what the Leader has to say and take an opportunity to see her in the next week or two to discuss it.

I appeal to the Leader to start, as her predecessor did, having on a weekly basis a meeting with both the Leaders and the Whips, so that we can support each other and help the smooth running of this House. It does not operate on the basis of one side versus everybody else. We can all work together but Senator Doherty is the Leader and I appeal to her to give us leadership.

It is important we have time to debate the Commission of Investigation (Mother and Baby Homes and certain related Matters) Records, and another Matter, Bill 2020 today. It can be a difficult episode for people, both here and outside.

I draw the House's attention to something I received in the post this morning, namely, the minutes of Galway County Council of Monday, 23 September 2019 and the commitments the council gave to the women and families from Tuam. I can make a copy available to anyone today via email. I hope the Leader will talk to her councillors in Galway County Council and I hope they echo her party's honourable commitments to these people in the debate today.

Senator Shane Cassells: I will touch on the debate that has been raging in the country over the past 48 hours in respect of the playing of GAA matches this weekend and, in particular, Members of these Houses weighing in and putting pressure on the GAA to concede that the competitions should be abandoned and drawing the false comparison between what has happened at club level in this country and these elite games. What happened after country finals over the past number of weeks was totally wrong. The GAA acknowledged that and came out ahead of the Government by shutting down the club championships two weeks ago.

The inter-county games are elite sport games. They are categorised under the Government's tier plan as elite sport. I listened to medics last night on television speak about how players would celebrate this weekend if they won. They have obviously never seen the dietary plans of elite GAA players because if these players took one pint, they would be off the county panel.

What galls me most is the singular focus on the GAA. There is no consistency in this new-found commentary by some Members of these Houses about sport. Are the same Members unaware that in eight days, the Italians are coming to Dublin to play in the Six Nations and one of their squad tested positive for Covid on Tuesday; or that, on Thursday, a Norwegian team come

here to play Dundalk in a Europa League game, which the owners of Dundalk are trying to have switched to Windsor Park, Belfast? I have not heard them call for these games to be called off. People are naturally worried but these elite games are being played in a bubble, behind closed doors and with no fans. They are broadcast on television and will provide people with some joy and hope this weekend. Critically, they are catered for in the tier plan agreed by the Government. I ask that people not try to unpick the plan on television just because a journalist has put the question in their mouth. It is time for people to think for themselves, agree to the plan for the country and be responsible.

Senator Paddy Burke: I rise to raise the issue of those who need to renew their driving licence. The situation is now at a critical stage as some people are driving without a licence. If one drives without a licence, one is not insured. Some people need their licence to be able to drive to work, but some others need an up-to-date licence as part of their work. I note the Minister ensured people over the age of 70 can register online for a licence, but there will still be a backlog in that area. I ask that the Minister immediately look at this issue and grant some sort of amnesty in respect of expiring or expired driving licences for a short period of time until the backlog is cleared or something can be done. It is a farcical situation.

On Standing Order 31, arising from the most recent meeting of the Seanad Committee on Procedure and Privileges it is proposed to delete the Standing Order without debate. It is a very important tool for Members which allows them to raise issues on Thursdays for two minutes. It is proposed that the Standing Order will be deleted. Some Senators who may not be aligned to a group or party may not contribute on the Order of Business but can use this tool to raise particular issues of importance with the agreement of the Cathaoirleach for a two-minute period at 12 noon on Thursdays. I ask the Leader to consider this issue. It would be a retrograde step to remove Standing Order 31.

An Cathaoirleach: On the 5th Report of the Seanad Committee on Procedure and Privileges, the Leader outlined that the motion would be taken on the conclusion of the Order of Business but did not outline whether it would be taken with or without debate. Will it be taken without debate?

Senator Regina Doherty: Yes.

An Cathaoirleach: Okay.

Senator Paul Gavan: I support the amendment to the Order of Business. I wish to put on the record of the House that I am genuinely disturbed by the way in which the House is being used. Every Senator should be disturbed by it. As Senator Warfield stated, having received a commitment just three or four weeks ago that legislation would not be rushed through the House, that is exactly what is being done again today in a way that is entirely inappropriate. It is being done for a Bill that, as was so eloquently explained by Senator McDowell, is not an emergency. It is being done in the face of the significant concern of thousands of people. The very reasonable request is that the Bill would be paused after Committee Stage. I ask all Members to bear in mind that there is no way the Minister or the Government could have read the thousands of emails Senators have received this week, many of which give harrowing personal testimony. There simply has not been enough time for those emails to be read or the issues they raise to be considered. For the Government to railroad the Commission of Investigation (Mother and Baby Homes and certain related Matters) Records, and another Matter, Bill 2020 through today because it has the numbers to so do is, frankly, disgraceful. When the House was

dealing with the Retention of Records Bill 2019 last year, Senators in every corner of the House were rightly horrified. The members of the Joint Committee on Education and Skills worked together to ensure that Bill would not go any further. Where are those voices today? The very same issues arise with regard to the Bill before the House today. The threat to transfer information to Tusla and seal records for 30 years is an affront to the thousands of victims. Senators are aware of the harrowing testimony in that regard in particular. If Senators disagree with me on this issue, that is fine but, for God's sake, they should not agree to have this Bill ramrodded through today. Senators on the other side of the Chamber should stand up and state there is something fundamentally wrong with the way this is being done.

Senator Timmy Dooley: Most Members will be familiar with the problems associated with pyrite and mica. However, they may not be aware that the schemes involving restitution for those affected by these issues are limited to certain areas, namely, counties Mayo and Donegal in respect of the defective block scheme and parts of counties Dublin and Meath in respect of pyrite. The pyrite scheme has been extended to cover County Limerick. It is about time for a national scheme to be put in place. A situation is developing in the county I know best, County Clare, where between 30 and 40 houses are affected by the defective block situation. That number is growing. Anyone who has visited one of these houses knows it is devastating for the owners and their families to see a relatively small crack in an otherwise well-built home widen over a period of months or, in some cases, a year or two to such an extent that one could put one's fist through it. That has a devastating impact on the lives and livelihoods of the people concerned.

I am calling for a debate on the matter in an effort to extend the scheme nationwide such that those affected in each county or area where these problems develop do not have to get together, spend a vast amount of money trying to prove their case and go through the same rigamarole as the homeowners in Mayo or Donegal or on the east coast. We should do all we can to give certainty and security once and for all to those who have been impacted so badly. I ask the Leader to facilitate a debate on this issue at the earliest possible opportunity. I know there are departmental mandarins who like to limit the potential exposure of the State. I get that. I understand that. Why does the scheme developed for Donegal and Mayo not apply to homeowners in counties Clare, Kerry, Limerick or elsewhere? A nationwide scheme should be instituted in the interests of fairness and equity and in recognition of the tremendous impact this issue has on homeowners and families. If one's home is not protected under such a scheme, what else can be done? These issues are not covered by insurance. When these houses were built, building regulations were not as strictly observed as they currently are. Nobody wishes to cast blame or look back. One cannot do so because this condition was not known or tested for at the time, but the manifestation of it now is very serious. It is a matter the House should try to address without delay.

Senator Micheál Carrigy: I wish to raise the issue of the continued problems being experienced by travel agents in accessing flight refunds from Ryanair, a company that has been particularly critical of the Government in recent days. Since the beginning of the Covid-19 pandemic, travel agents have submitted thousands of claims to Ryanair in order to refund their customers whose flight bookings were affected. To date, travel agents are owed approximately €20 million in refunds from Ryanair. Senator Dolan and I spoke to my local travel agent, Kane Travel in Longford, about the issue. It should be noted that funds held by licensed travel agents are guaranteed by the State in case of insolvency, which offers further protection to customers in the event that the agent or operator becomes insolvent or goes out of business.

Mr. Pat Dawson of the Irish Travel Agents Association, ITAA, stated that travel agents are doing their best to secure refunds for customers as quickly as possible. He stated that customer protection is travel agents' top priority and that the issue continues to affect high street agents as well as online travel campaigns. He pointed out that as Ryanair continues to refuse to deal with ITAA members, travel agencies have reached an impasse when it comes to securing flight refunds for their customers. This is not acceptable. Agents have been working solidly throughout the pandemic to assist customers with bookings. The companies simply could not close down even though they were effectively blocked from claiming refunds. Instead, they have remained open to service customers with cancellations, refunds and rebooking holidays. They are not using the current situation as an excuse to avoid refunding customers. They respect and value their customers.

I call on the Commission for Aviation Regulation and the Department of Transport to work with the ITAA to secure refunds for hard-pressed customers as quickly as possible. We need legislation to be implemented such that any vouchers issued to customers can be used by the travel agent and sold on to another customer should the person wish to receive the funding back. More than 3,000 jobs in the industry have been affected. It is time to protect travel agents in order to protect their customers.

Senator Annie Hoey: I rise to speak about maternity care in the time of Covid. Senator O'Loughlin has already spoken about this. Yesterday was Pregnancy and Infant Loss Remembrance Day. I am sure Members will join me in thinking of those who have suffered a miscarriage, are waiting for their rainbow baby, have suffered infant loss, are struggling with their fertility, have suffered a stillbirth or are still yearning to be parents. We have all heard on the news, from friends and from constituents about the ongoing issue of lack of access for partners of pregnant people in maternity care. At their appointments, pregnant people receive a range of different kinds of news, from the most joyous to the most concerning, and in some cases even the most tragic news an expectant parent can receive. They are doing so, in the main, entirely alone. This is not just the case on labour wards but in GP offices, consultation rooms and hospitals. As it currently stands, the partner of an expectant parent can go to a pub, café, restaurant, park, gym, salon or bookies with others from outside their family but cannot accompany their partner to a labour ward, consultant's appointment or operating theatre. A friend contacted me saying she had an emergency caesarean section quite recently and she lay on the bed soiled because her partner was not there and the nurses were so rushed off their feet that they could not help her. It is not acceptable in this day and age that we have pregnant people in that situation before or after delivery.

This has been raised across the national airwaves, in this House, in the lower House, and by my colleague Deputy Duncan Smith on the Covid committee and thus far there has been virtual silence from the Government on the matter. It is the position of the Labour Party that there must be compassion in care even during Covid. In fact, there has never been a time when compassion in care was more needed. I ask the Leader of the House, Senator Doherty, who did so much to campaign for compassionate access to abortion care alongside those of us in Together for Yes, to request that the Minister for Health come into the Chamber to listen to the concerns of pregnant people, their partners and families regarding maternity care in Ireland.

Senator Robbie Gallagher: Today is the first day of level 4 regulations for the good people of counties Monaghan, Cavan and Donegal. Yesterday evening it was absolutely heartbreaking to witness shop owners, hairdressers, beauty salons and hotels close their doors for the second time in six months. This was done through no fault of the business owners concerned. They

did everything they were asked to do. They invested in their businesses, they trained their staff and today they are closing their doors and again facing an uncertain future. My heart goes out to them because I can only imagine the stress and anxiety the business owners, their families and indeed their staff are going through at this time. I welcome the measures introduced in the July stimulus package and those in the budget passed this week. All of them will be needed, and perhaps even more. However, for businesses in counties Monaghan, Cavan and Donegal, additional help is required. For that reason I propose that the Government introduce a helpline for such businesses, particularly small businesses with five or fewer employees. Those who are busy looking after their businesses and trying to survive are not aware of all the help and assistance that is out there. A helpline for those businesses is an absolute necessity so that people can pick up the phone and talk to someone who can guide them as to what they can and cannot do and what help and assistance, financial or otherwise, is available to them.

Senator Garret Ahearn: I wish to raise enforcement laws and the powers of the Garda in relation to Covid-19. The last week has been very difficult, particularly for the three counties that have gone to level 4. It is now widely accepted that all other counties are going to be on level 3 for quite some time and will not be coming down from it soon. That means asking people to stay within their counties and asking businesses to remain closed for a long period of time. Most people are abiding by and sticking to the guidelines and recommendations. They are sacrificing an awful lot in their business lives and normal lives to abide by these guidelines. Certain people are not doing so, however. There is a certain group who believe the guidelines do not apply to them. It seems to me and certainly to people who have closed their businesses, including restaurants or pubs, that other people can still carry on as if there is no problem. The Garda Commissioner, Mr. Drew Harris, has said he does not believe extra measures need to be brought forward. Does the Leader agree that if we want people to follow these guidelines, as they previously have, through the winter months, there has to be seen to be a deterrent for those who do not? In other countries fines have been imposed on those leaving their districts or not wearing masks. A small minority of people are behaving in this way, but this virus is so deadly that measures are needed to ensure everyone stays inside.

Senator Erin McGreehan: I would like to request a debate on equality, or more importantly inequality. In the programme for Government we have a commitment to a national strategy for women and girls. I would like to invite the Minister to the House to discuss this issue, to set out when work on the strategy will begin and to clarify when it will report. In light of the debate we have been having this week, it is really important that we have a proper national strategy on gender equality and inequality across the Houses and across the country. The programme for Government also commits to examining the addition of socio-economic disadvantaged status as a ground for discrimination. This is very important. We heard earlier this week from Senator Ruane about coming from a Delivering Equality of Opportunity in Schools, DEIS, school and going on to study law at third level. A person can suffer prejudice for a basic thing like their accent or address. I was told as a young one that I would not get anywhere in the world - some people might say that I still have not - but I am damn proud to be here with my County Louth brogue and to talk in it. Inequality based on who a person is or what he or she looks like is not acceptable. We need to have a proper national strategy on how we are going to deal with this because, for the first time in our nation's history, class and where a person comes from really matters. It is really disappointing because I grew up in an area where I went to school with the children of people who were on the dole and the children of solicitors, doctors and tradesmen but that is changing. Different levels of class, for want of a better word, are coming to the fore more and more. We disadvantage and marginalise people at our peril and I would very much

welcome a debate on this in the House.

Senator Vincent P. Martin: I will address a very serious issue. Next month, the United States of America elects its next President. I hope it will be a new President, with Joe Biden becoming the 46th holder of that office. It could not be a more serious time for the world. The outcome of that election will have serious long-term consequences for the Iran nuclear deal, for the Paris climate agreement, for the EU, for Brexit, for ethnic minorities and for respect for women. Many years ago, in the 1990 World Cup penalty shoot-out as Dave O’Leary faced the ball, George Hamilton uttered the immortal phrase, “The nation holds its breath.” Next month, the world will hold its breath, in a sense, praying and hope for a certain outcome in that election. There are 33 million people in America who claim Irish ancestry and so many more friends of Ireland who care about Ireland and peace on the island of Ireland. Samantha Power, the former US ambassador to the United Nations, said that we need more than Hail Marys next month. Every single vote matters in the swing states and we can do something about it. It might not be the convention for a Government to involve itself in someone else’s election but our voice as individual public representatives should be heard. The voice of individuals who may not be public representatives in Ireland, throughout the world and throughout the EU, should be heard loud and clear. People should contact their long-lost cousins, friends, relatives and friends of relatives’ friends. Every single vote matters in this once in a lifetime opportunity to get the world back on track. I appeal to Members to do what they can to have effective input into next month’s critical election for the world.

An Cathaoirleach: It is not our place as a country to interfere in the elections of other countries. I am not sure that is an issue for the Order of Business. I thank the Senator.

Senator Jerry Buttimer: He is right though.

Senator John McGahon: The Cathaoirleach is the guy with the experience on the Capitol, that is for sure. I raise the concept of teachers who are considered to be extremely high risk, due to medical issues, and who continue to have to work in our schools. I spoke with a teacher in my home county, Louth, during the week and again this morning as I drove to this House. She is based in a part of County Louth where she is dealing with students who are coming from Dublin, County Meath and County Louth, so that is three different geographical areas. Unfortunately, a couple of years ago, she had to have a serious operation that involved having part of her lung removed. She is considered high risk medically and she now has to take sick leave. That sick leave will naturally affect the number of days that she is allowed to take over four years. She will have to pay tax on the sick leave too, so there will be double taxation. One can compare this with other teachers in the severely high risk category who are allowed to leave on a full Covid payment. It is not her fault or the school’s fault.

The reason for it is Circular 0049/2020 issued by the Department of Education and Skills, which sets out defined limits regarding what is considered to be severely high risk. We have all been told that we have to work from home when we are considerably high risk, but this individual has to take sick leave because she is so high risk. She works with children with learning disabilities in our school and, therefore, she has to have close contact with those students. There is no concept of her being able to socially distance. The Irish National Teachers’ Organisation asks that boards of management be given the means to discharge teachers who are high risk but that puts boards of management in an unfair position because they are not medical doctors. I would like Circular 0049/2020 to be re-examined. This only affects a small number of high risk teachers. It is not fair that they are being forced to take sick leave as a result of a

circular and the definitions that the Government has sent around.

Senator Mary Fitzpatrick: This morning, I renew my request for this House to debate the issue of homelessness, particularly homelessness in Dublin city. This week, the deputy chief executive of Dublin City Council, Brendan Kenny, issued the latest report from the Dublin Region Homeless Executive, which documented that, as of the last count, there are currently more than 6,227 homeless people in Dublin. There are more than 856 families with more than 2,000 children, and close to 3,000 single people are homeless in the city. I commend the Government for the action it took this week in announcing the largest housing budget in the history of the State, and €3.3 billion will go a long way. Some €1 billion will be spent on social housing. More than €200 million will be spent on homelessness. That is to be commended and I support it. In August, I asked that we would debate the issue following the deaths of five homeless people in the city in one week. The latest report shows that despite having added beds, beds are going empty, yet in excess of 100 people are sleeping rough on the streets of the city.

We need to debate the quality of emergency accommodation being provided, the overconcentration in the north inner city, with no family hubs in Fingal or south County Dublin and families from Dublin 15 and beyond having to relocate back out to the county with their children, travelling on buses. We need a proper debate on the issue. It is a human issue that the Government and all of us in this Chamber should be concerned with. I renew my request for that debate to happen sooner than later.

Senator Sharon Keogan: I want to bring to the attention of the House that this is Tusla National Fostering Week 2020. I implore any parents who may have a space in their home to consider fostering.

I raise the issue of the EU's flight travel policy that was voted on this week and that will be voted on by our Government on Tuesday. We are closed for business. We need a debate with the Minister with responsibility for tourism and the Minister for Transport, so they can tell us what they will do to reopen our economy. Foreign direct investment, FDI, is important to this country and we can see that executives and people involved in FDI cannot travel in and out of this country. We want our economies to be opened. We want our businesses to thrive. We will be totally alienated from all of Europe come Brexit. We do not want to be a pimple on the ass of Europe. It will sound like that, but really-----

An Cathaoirleach: Sorry, Senator-----

Senator Sharon Keogan: Sorry, I cannot use that word. I beg the Cathaoirleach's pardon.

An Cathaoirleach: I appreciate the Senator's use of the terminology but it is unparliamentary.

Senator Sharon Keogan: Please forgive me. We are taking up valuable time.

An Cathaoirleach: The Senator is grand. It is slightly unladylike.

Senator Michael McDowell: Posterior is a better word.

Senator Sharon Keogan: We do not want to be a pimple on the posterior of Europe.

An Cathaoirleach: All I would say is that it is slightly unladylike.

16 October 2020

Senator Sharon Keogan: Is the Cathaoirleach saying that I am unladylike?

An Cathaoirleach: To be clear, the phrase is slightly unladylike.

Senator Sharon Keogan: Thank you kindly.

(Interruptions).

An Cathaoirleach: The Senator is most definitely a lady.

Senator Sharon Keogan: Oh my goodness. I have run out of time.

An Cathaoirleach: No, no.

Senator Sharon Keogan: I apologise to the Cathaoirleach and the House for the word.

An Cathaoirleach: That is quite all right. The Cathaoirleach took absolutely no offence from the phrase. I would just point out that it is unparliamentary and slightly unladylike.

Senator Vincent P. Martin: Is it ungentlemanlylike?

An Cathaoirleach: The phrase is slightly unladylike. I know that the Senator is too humble to mention her own great work in the area that she first brought up, which is fostering, and I thank her for raising it.

Senator Mary Seery Kearney: I echo the sentiments and spirit of Senator McGreehan's proposal on the basis that I have had the experience myself, when dining in Kings Inns, of a senior member of the Law Library asking me what school I went to. When I replied, the next comment was, "How very remiss of your parents." I support her views.

I have three points to raise with regard to the changing environment and our requirement for compliance. At the beginning of this crisis, we had fantastic resources on the HSE website with posters and information. It was translated into 27 languages and it was great to get it out among the community. We have updated our position. At the moment, the information on face masks, etc., is only in Romanian, Russian and Bulgarian. It is necessary in our multicultural society to update that and make sure that the level 3 information is available as quickly as possible. I have written to the Minister in that regard. The Tánaiste, during a briefing the other evening, spoke about the idea of touch points, although he did not quite use those words. He was referring to the reasons we are being asked not to have visitors in our homes, that is, that we share things such as doorbells, cups and spoons. We need some information on the idea of touch points. Health and safety professionals have gone into businesses and advised in this regard but we have not tailored the same interventions to our homes. For instance, can we leave gates open so the postman does not have to touch them? There will be a lot of parcel post arriving to homes and we need to be mindful about doorbells and that level of hygiene. There is another little piece of work to be done on hygiene and advising people what to do around their homes.

My final point relates to Christmas shopping and returns policies. I would be loath to start Christmas shopping now, though I have a sister-in-law who I am sure has it all done because she is fantastic. I would be afraid that the people in my family who always return gifts will not be able to.

An Cathaoirleach: The Senator should not compare herself with her sister-in-law. She is not here in the House to defend herself.

Senator Mary Seery Kearney: Returns policies usually apply for 28 days so if one does one's Christmas shopping now, it will not be possible to return the gifts after Christmas. We need to support the Consumer Association of Ireland, with funding or otherwise, in getting out the information and ensure that where there is a need for exchange policies, it is broadcast and supported so that we have social distancing and a longer run-in to Christmas.

Senator Eugene Murphy: I want to express my disappointment that Members of the Oireachtas and the Law Library have not tried to keep to the rules and regulations. We might not like some of them but we all have a responsibility to do what we are supposed to do.

Within the next 24 or 48 hours, football teams from all over this country will engage in matches. That is a grave mistake. I understand how people feel and the point made by my party colleague, Senator Cassells, about the well-being of people who are looking forward to seeing those matches on television. However, let me give the picture from my part of the country. I am one of the most avid sports fans in County Roscommon. I am hugely into GAA and travel all over the country to watch games. I am also into soccer and always go to Longford Town matches because its ground is close to me. I also follow rugby. I watch all sports. Roscommon are scheduled to head to Armagh, Leitrim to Newry and Longford to Derry, although the Longford county board objected to going there. Kerry is scheduled to come to Monaghan.

Senator Vincent P. Martin: What about Cavan?

Senator Eugene Murphy: I cannot leave out Cavan, I know lots of people there. Can I remind everybody of what Dr. Tony Holohan, a man who we all respect even though we might not always fully agree with him, said yesterday evening. He said that the virus is out of control in the Twenty-six Counties. He is a medical man, whether we like what he says or not, and it is outrageous and unacceptable that we could not ask the GAA and the Government to ensure those matches are postponed for a couple of weeks. I am not talking about abandoning them. We may look back with regret on this weekend in the weeks ahead. It is perhaps not the bravest thing to say because there is division in society on this matter but, really and truly, politicians on all sides have to be brave here, show leadership and say things that may be unpopular. I appeal to everybody, even at this late stage, to postpone those matches for two or three weeks until we get control of the virus. The same should apply to League of Ireland matches and the Italian rugby team should not be coming here in a couple of weeks' time. All those games should be abandoned for now.

Senator Gerard P. Craughwell: I compliment my colleague, Senator Murphy, on his speech and agree with everything he has said.

We were promised that, when the schools reopened, there would be no particular problem with substitute teachers, etc. A number of principals of primary schools have contacted me in the past few days about the difficulty in finding substitutes. I was not a primary school teacher so I am not sure how the system works but I understand there are primary and secondary groups of substitutes. One principal told me of ringing 34 substitutes from the secondary list and being unable to get one into the school.

We are constantly being told by the Minister for Education and Skills that schools are not a source of transmission of the virus. I agree that the discipline in schools is excellent. Anyone can take a walk up the street by the Shelbourne Hotel any day when schools are out and watch hundreds of students coming towards them. I am over 60 and am petrified of this virus. I have

met people in my local area who are absolutely petrified of children coming out of schools and there are a number of schools around my area.

I propose an amendment to the Order of Business whereby the Minister with responsibility for education can come here and explain to the House the plans that are in place to ensure that there are sufficient numbers of substitute teachers available to principals of national schools. I also want to be given the scientific evidence that states that children do not spread the virus. A scientific piece of research was published yesterday which stated that children are superspreaders. The bottom line is that I want somebody to come to the House today to deal with that matter. The Minister told me in Seanad Éireann that schools are not a problem. They are a problem if we do not have substitutes and we do not have a way of marshalling students as they leave the school.

An Cathaoirleach: Seven Senators wish to contribute and we are way over time so I ask Senators to be brief.

Senator Jerry Buttimer: I join with Senators Carrigy and Keogan in asking that we have a debate about the issues of travel agents and travel. Only this week, Ryanair has announced the closure of its bases in Cork and Shannon. I will repeatedly demand that we have an honest debate about whether we, as a country, are going to be open and open for business. It is incumbent upon us to have that honest debate in this Chamber.

I ask Members of the House to reflect on what they have said about Cumann Lúthchleas Gael and the GAA championship season. The Chief Medical Officer wrote to the Government and stated that, under level 5, matches can take place. The matches are taking place behind closed doors and, as Pat Spillane said this week, the championship is the symbol of hope for all of us. I support Senator Cassells and ask Cumann Lúthchleas Gael to reflect on the point that it makes no sense for Kerry footballers to drive to Monaghan in single cars next Sunday, nor does it make sense for Donegal players to drive to Kerry a week later. I ask Cumann Lúthchleas Gael to come up with a neutral venue policy. We are playing the games behind closed doors. I am a member of my club executive and a former county board officer. I was chairman of my club for six years. We should not play politics with Cumann Lúthchleas Gael. It is the binding force of unity in communities in our country. I appeal to the management committee of Cumann Lúthchleas Gael to be sensible about the venues that are selected for matches and come up with neutral venues.

Senator Niall Blaney: I second the proposal of Senator Gallagher about the helpline for those businesses caught up in level 4.

As a former Member of the Lower House, I was once appointed co-chair of the British-Irish Parliamentary Assembly at a time when unionist participation had never taken place in its 20-year history. I spent the next 21 months alongside former Secretaries of State for Northern Ireland, Mr. Paul Murphy and Mr. Peter Hain, doing everything we could to get participation from unionist parties. I am now a member of the Joint Committee on the Implementation of the Good Friday Agreement which met yesterday with the Minister for Foreign Affairs, Deputy Coveney. That committee now finds itself in a situation similar to the one I was in with the parliamentary assembly and I have asked the Minister to do everything he possibly can to ensure unionist participation. I ask, with the agreement and support of the House if possible, that the Leader writes to both the Taoiseach and the Minister for Foreign Affairs and Trade, with the support of the Upper House, for us in the Oireachtas to do everything we can to ensure that

unionists are encouraged and facilitated to join the Oireachtas Joint Committee on the Implementation of the Good Friday Agreement. We know the work that is possible with a shared island now being put together and the €500 million pot for projects across the island over the next five years so it is imperative that this happens. I ask the Leader to facilitate a debate with the Minister for Transport and the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media to discuss a number of projects that were mentioned concerning the €500 million pot. I have a keen interest in the Dublin-Donegal railway line that no longer exists but could very well be one of the great greenways of this country.

An Cathaoirleach: If the Senator is agreeable, I would do the same and write to the Taoiseach and the Tánaiste as well. The Senator has made a very good proposal.

Senator Martin Conway: It was with great regret that Ryanair announced yesterday that it would close its bases in Shannon and Cork for the winter. The decision was not a surprise because Ryanair is a private company that must make commercial decisions.

Next Tuesday, at Cabinet, the Minister for Transport will make a proposal to provide funding for Shannon and Cork airports and other airports. I sincerely hope that the funding package will be significant. I hope that it will facilitate capital investment in the airport and help the airport with its operational costs.

I ask the Leader to facilitate a debate on transport, particularly on Shannon and Cork airports, after the Government announcement was made because it is critical that this House analyses, with the Minister present, the details of the package of measures that will be available to airports. I appeal to him to ensure that the package is large enough to sustain the airport not just through the pandemic but to facilitate it developing and building. People reckon that 2024 will be the next year we will see figures like 2019 but that is four years away. A lot of critical work needs to be done in the intervening period. We are an island nation and the west of Ireland is deeply dependent on air travel. It is critical for us to have a debate whereby the Minister outlines his proposal to make the airports sustainable.

An Cathaoirleach: I still have five Senators offering and I want to get them all in. I do not want to cut them off as they have been here quite a long time so I ask Senators please to confine their contributions to one minute. We are about to run half an hour over our allotted time. I call Senator Mullen.

Senator Rónán Mullen: I second Senator Craughwell's amendment. I am happy to do so.

Senator Jerry Buttimer: The Senator does not have to second it.

Senator Rónán Mullen: I have to, morally and in a spirit of collegiality. I will find out later what precise Vote is being proposed.

An Cathaoirleach: The Senator still only has one minute.

Senator Jerry Buttimer: The Senator will need more stationery.

An Cathaoirleach: Please stop interrupting Senator Mullen. He has a valuable contribution to make but only one minute to make it.

Senator Rónán Mullen: I want to talk about the artists' tax exemption but there is more to be said about it than I can say in a short period.

In response to what Senator Martin said, regardless of which administration or candidate succeeds not everything about either administration will be good. That point was brought home forcibly as I watched some of the hearings that featured the very impressive candidate for the US Supreme Court, Amy Coney Barrett. The thought struck me that she would not have a hope in hell of being nominated by a Democratic administration, which would be a great pity in my view. The thought also struck me that despite the sadness of the divisiveness in Senate hearings in recent times in America on the appointment of senior judges, and I reflect in some way on recent controversies in this country around the Judiciary, there is something to be said for some kind of parliamentary scrutiny of proposed senior appointments to the courts. I am not always a fan of putting politicians in the role of judges, as I have stated in the past, but there is something to be said for some kind of public visibility of Government nominees to the superior courts before the appointments are concluded.

Senator Tim Lombard: Many Senators have mentioned the GAA and the national league. We really need to discuss the matter. I do not see a need for national leagues at the moment because there is no logic in players travelling, for example, from Kerry to Monaghan and Cavan to Kildare. We need to look at what we are trying to do.

As much as the GAA can control what happens on the pitch, it cannot control what happens off the pitch. We saw that in my county in the last few weeks after a county final. I worry about such scenarios and so appeal to the GAA to step back from the issue and realise that the national leagues do not need to happen. As a GAA supporter, and without being rude to the national leagues, they are not the most important part of the GAA calendar. At a later stage we can assess whether the All-Ireland series should be go ahead. For now, I urge the GAA to step back from the abyss and cancel the national league games this weekend.

Senator Lynn Boylan: I will not need a minute as Senator Craughwell has covered all bases. I was also going to second his proposal.

I take the opportunity to ask Members of the House that before we debate the Commission of Investigation (Mother and Baby Homes and certain related Matters) Records, and another Matter, Bill 2020 this afternoon that they go outside to the front of this House and meet some of the survivors. They are standing outside and ask this House not to pass the Bill, not to put their documents away and not to prevent them from having their testimonies and information.

Senator Gerard P. Craughwell: Hear, hear.

Senator Lynn Boylan: I ask Members to go outside and explain to the survivors - to their faces - why they are going to seal their documents away for 30 years.

Senator Gerard P. Craughwell: Well said.

Senator Malcolm Byrne: Yesterday evening, we in the Gorey local electoral area in County Wexford discovered, having had a very low rate of Covid-19 infection, that we rocketed up to have one of the highest on the island. We now have an incident rate of about 533.8 per 100,000, which shows how contagious the virus is so people are worried and frightened. For any community where there is a sudden upsurge it causes a lot of problems.

I welcome the fact that the HSE has now provided an emergency Covid testing centre in Ferns and increased the number of lanes at the Wexford centre from two to four. There are very good supports in place for business but we also need a debate on the strategy for rebuilding

communities. We have got to give people hope. We will overcome the virus but we must show how our arts, sporting and community organisations can be helped to rebuild our communities.

Senator Joe O'Reilly: I ask the Leader to convey in writing our congratulations and good wishes to the Minister for Justice and Garda Commissioner on the successful completion of Detective Garda Adrian Donohoe's murder trial and sentencing. It is important and vital that justice is done there. We owe great gratitude to the gardaí, various forces of law and order here and, indeed, the Department of Homeland Security in America.

The Donohoe family is highly respected in my county. The parents are still alive there and the family is very respected. After their terrible tragedy a little glimmer of joy came into their lives last week. Adrian's Dad, Mr. Hugh Donohoe, has been president of the local GAA club for years and is a former player. His club won the county championship last week, which was a little joy.

I congratulate all involved in bringing justice in this case and salute the Donohoe family. I urge the Leader to convey my comments to the Minister and the Garda Commissioner.

Senator Regina Doherty: In response to some of the contributions that have been made, as a colleague and pal of mine for many years and an adversary, and a lot of those years on different issues, Senator Sharon Keogan is an absolute lady.

12 o'clock

She is one of the hardest working ladies both in her home as a foster parent and in our community for all of the years I have known her. A number of debates have been asked for today. The issue was raised of maternity care and the co-operation of these hospitals, in recognising that there are two parents in almost every single case. Both parents need to be recognised during the duration of that pregnancy and the care thereafter. It is very vital that we have that debate as quickly as we can.

The debate on disability is, again, timely. Our services have been closed for many of our citizens for far too long. The extra money is welcome but we need to know how this will resolve in getting our day services open again. We will schedule that debate as quickly as we can.

A number of Members have touched on the US elections. I will not comment on it but I will agree and concur with Senators McGreehan and Seery Kearney's call for a debate. When a lady, Amy Coney Barrett, is asked who does the laundry in her house when being interviewed for one of the most serious and senior positions in the American judiciary, this is an absolute disgrace regardless of whether one agrees with her politics or the politics of the party that has proposed her. It goes to show that we have a hell of a long way to go to achieve equality, not just in Ireland but in the world.

As to the debate on homelessness that was asked for by Senator Fitzpatrick, I did not ignore her call for a debate when she asked for it in August. The Minister has agreed to come to this House and the earliest date that I can get him to do so is in November which has been scheduled.

I agree that, notwithstanding that we had the Minister for Transport, Tourism and Sport in here only a number of weeks ago, it seems like a lifetime ago as so much has changed. With the advent of adopting the green list and the funding for our airports, which will happen next Tuesday, it will be vital that we get both Ministers back in to this House at the earliest convenience

and I will do this for Senator Carrigy as quickly as I can.

On the two amendments to the Order of Business, I will take the second one first. Unfortunately the Minister, Deputy Foley, is in Kerry today. Even if I was of a mind to try to facilitate Senator Craughwell's amendment, I cannot get hold of her as she is in Kerry and there is no feasible way for her to be here today. I will certainly asked that question as the issue raised by the Senator is very relevant, not just to our primary schools but to all of our secondary schools also, and does not just extend to teachers but to resource teachers and SNAs also. This is really vital and permeates through every statement made, not just by Ministers but by leaders in Ireland, and particularly by our leaders in NPHE. Our main aim is to keep our children in school and to keep the education system working. We all know the damage that was done to quite a number of our children during the months that schools were closed. We must keep the schools open safely and ensure that we have replacement teachers for staff members who may get sick during the course of this pandemic. If there is not a plan there then we certainly need one. We need to hear what the plan is or at least be able to input on what our suggestions should be to keep our schools open. I will arrange that as quickly as I can but I am not in a position to support the amendment.

I am also not in a position to support the first amendment to the Order of Business which proposes to take Report Stage at a later date because the Bill is scheduled to go to the Dáil next week. On that basis I will be opposing the amendment.

I wish to briefly refer to Senator Boyhan's irksomeness at having received the Order of Business at 10.19 a.m. The Order of Business, a Chathaoirligh, as Members know well, is drafted in consultation with the Seanad Office to ensure that what I read out on the Order of Business is procedurally correct. As to the business to be dealt with, absolutely nothing was added that was not already in the schedule that I issued to all Members last week. I reissued a revised schedule to Members yesterday arising from the issues that were dealt with at the Committee on Procedure and Privileges, CPP, this week. There should be no conspiracy theory suggested as to people getting anything late. The schedule put before the Senator this morning was exactly the same schedule that was given to Members last week and yesterday. The Senator is more than welcome and willing to meet me any time and I am here nearly every day.

I am fully open to the request for a leaders and whips meeting and I am willing to do this every week but we do have a CPP meeting every week. This week we are having two such meetings. What I do not want to do is to assume that people have nothing better to be doing than having the same conversations in two meetings. When we have run our course of scheduled items on the CPP, it will probably go back to meeting on a monthly basis, and we can then certainly have a scheduled meeting for leaders and whips every week.

Certain members have touched on what they think should and should not be happening in Irish society. One either agrees with the GAA or does not. It is very telling that no other specific sporting or entertaining organisation was raised today. We need to have a significant debate, not just in this House but in Irish society on the psychosocial impacts of Covid-19 that are affecting every single household, whether it is a single-person household that has been impacted by the no-visitor rule or suggestions that were made this week, or a household with a lorry-load of children in it. The psychosocial impact of Covid-19 is something that we are all talking about in quiet corners in terms of how we can ensure people's well-being is going to be minded. However, we are not talking about it at a national level or from a programme of delivery perspective, or how we will build resilience in our children who we certainly want to

keep going to school. Some of these children are absolutely petrified that they are going to get sick and make their granny or grandad sick.

We are not talking about the underlying levels of anxiety that exist in healthy normal people who have good jobs, before we ever get to the anxiety levels of people who are on €300 a week. This is a huge debate that we need to have not just in this House but in Irish society. Society needs to show and be shown leadership from our Ministers, our Government, from the HSE and from organisations that look after our mental health and well-being but this usually happens after the fact that we have reached crisis. We are in the biggest emergency this country has ever seen.

The fact that we announced almost €18 billion worth of investment in Irish people on Tuesday and by Wednesday we had moved on to talking about something else tells us that we are living in a time where people are moving from announcements made three or four hours ago and we nearly forget what happened yesterday because we are so concentrated on what is happening today. If that does not tell people the level of anxiety that people are living under, whether they recognise it or not, then we are storing up enormous problems in terms of the well-being of our citizens in this country. We cannot ignore this any longer. To that end, with the agreement of Members, I will write to the Cabinet and ask it to convene a special group to consider what programme should be put in place to build not just resilience in our children and schools, but resilience in all of society. I fear that sometimes when announcements are made there is a lack of information or understanding as to why. Other Members mentioned today that we need touchtone information as to why announcements are being made so that we can appreciate and follow them. I feel that we will have a very grave situation like that which is currently being experienced in Israel, where if we lose the minds and hearts of people as to what we are trying to do for the public good and in their best interests, then we will have a very serious problem that we will not be able to come back from.

Senator Jerry Buttimer: Hear, Hear.

An Cathaoirleach: I thank the Leader. Senator McDowell has moved an amendment to the Order of Business, “That in respect of the proposal regarding the Commission of Investigation (Mother and Baby Homes and certain related Matters) Records, and another Matter, Bill 2020, the words ‘and Remaining Stages’ be deleted.” Is the amendment being pressed.

Senator Michael McDowell: Yes.

Amendment put:

The Seanad divided: Tá, 17; Níl, 33.	
Tá	Níl
Bacik, Ivana.	Ahearn, Garret.
Black, Frances.	Blaney, Niall.
Boyhan, Victor.	Burke, Paddy.
Boylan, Lynn.	Buttimer, Jerry.
Craughwell, Gerard P.	Byrne, Malcolm.
Gavan, Paul.	Carrigy, Micheál.
Higgins, Alice-Mary.	Casey, Pat.
Hoey, Annie.	Cassells, Shane.

Keogan, Sharon.	Conway, Martin.
McCallion, Elisha.	Crowe, Ollie.
McDowell, Michael.	Currie, Emer.
Moynihan, Rebecca.	Daly, Paul.
Mullen, Rónán.	Davitt, Aidan.
Ruane, Lynn.	Doherty, Regina.
Sherlock, Marie.	Dolan, Aisling.
Wall, Mark.	Dooley, Timmy.
Warfield, Fintan.	Fitzpatrick, Mary.
	Gallagher, Robbie.
	Garvey, Róisín.
	Hackett, Pippa.
	Kyne, Seán.
	Lombard, Tim.
	Martin, Vincent P.
	McGahon, John.
	McGreehan, Erin.
	Murphy, Eugene.
	O'Donovan, Denis.
	O'Loughlin, Fiona.
	O'Reilly, Joe.
	O'Reilly, Pauline.
	Seery Kearney, Mary.
	Ward, Barry.
	Wilson, Diarmuid.

Tellers: Tá, Senators Michael McDowell and Victor Boyhan; Níl, Senators Robbie Gallagher and Seán Kyne.

Amendment declared lost.

An Cathaoirleach: Senator Craughwell has moved an amendment to the Order of Business, “That a debate with the Minister for Education and Skills on her plans to ensure sufficient numbers of substitute teachers are available to national schools, and on the medical basis on which it is deemed safe for children to attend school, be taken today.” Is the amendment being pressed?

Senator Gerard P. Craughwell: No, I will not press the amendment. I take the Leader’s word that she will prioritise this issue and deal with it on the nearest possible date.

Order of Business agreed to.

**Commission of Investigation (Mother and Baby Homes and certain related Matters)
Records, and another Matter, Bill 2020: Second Stage (Resumed)**

The following motion was moved on Wednesday, 14 October 2020: “That the Bill be now read a Second Time.”

Debate resumed on amendment No. 1:

To delete all words after “That” and substitute the following:

“the Bill be read a second time on 21st October, 2020, to allow for further consultation on certain provisions of the Bill, including the insertion of the words ‘another matter’ into the title of the Bill and the insertion of section 6 into the Bill, noting the power of the Minister to further amend the Terms of Reference of the Commission to provide for a later date for the delivery of its final report.”

(Senator Michael McDowell)

An Cathaoirleach: We must now deal with the postponed division relating to Second Stage of the Commission of Investigation (Mother and Baby Homes and certain related Matters) Records, and another Matter, Bill 2020, which took place on Wednesday, 14 October 2020. On the question, “That the amendment be made”, a division was claimed and that division must be taken now.

Amendment put:

The Seanad divided: Tá, 17; Níl, 30.	
Tá	Níl
Bacik, Ivana.	Ahearn, Garret.
Black, Frances.	Burke, Paddy.
Boyhan, Victor.	Buttimer, Jerry.
Boylan, Lynn.	Byrne, Malcolm.
Craughwell, Gerard P.	Carrigy, Micheál.
Gavan, Paul.	Casey, Pat.
Higgins, Alice-Mary.	Cassells, Shane.
Hoey, Annie.	Conway, Martin.
Keogan, Sharon.	Crowe, Ollie.
McCallion, Elisha.	Currie, Emer.
McDowell, Michael.	Daly, Paul.
Moynihan, Rebecca.	Doherty, Regina.
Mullen, Rónán.	Dolan, Aisling.
Ruane, Lynn.	Dooley, Timmy.
Sherlock, Marie.	Fitzpatrick, Mary.
Wall, Mark.	Gallagher, Robbie.
Warfield, Fintan.	Garvey, Róisín.
	Hackett, Pippa.
	Kyne, Seán.
	Lombard, Tim.
	Martin, Vincent P.

	McGahon, John.
	McGreehan, Erin.
	Murphy, Eugene.
	O'Loughlin, Fiona.
	O'Reilly, Joe.
	O'Reilly, Pauline.
	Seery Kearney, Mary.
	Ward, Barry.
	Wilson, Diarmuid.

Tellers: Tá, Senators Michael McDowell and Victor Boyhan; Níl, Senators Robbie Gallagher and Seán Kyne.

Amendment declared lost.

Question, "That the Bill be now read a Second Time", put and agreed to.

An Cathaoirleach: When is it proposed to take Committee Stage?

Senator Regina Doherty: Today, following the sos.

An Cathaoirleach: Is that agreed? Agreed.

Shannon Group: Motion (Resumed)

The following motion was moved by Senator Paul Gavan on Wednesday, 15 October 2020:

"That Seanad Éireann: acknowledges that:

- the Shannon Group supports over 46,000 jobs and contributes €1.1 billion in tax revenue to the exchequer;
- the importance of the Shannon Group to the Midwest region to maintain jobs and to continue economic development of the region, as well as to the national economy;
- the need to ensure the continued survival of international air travel from the Midwest region;
- that regional balanced economic development must be central to Government planning;

and calls on the Government to:

- commit fully to the survival and development of the Shannon Group and maintain its many international travel routes; and
- commit to the re-integration of Shannon Group under the remit of State control within the DAA in order to ensure collective leverage is attained in order to secure vital

routes to London Heathrow and the East Coast of the United States of America”

Debate resumed on amendment No. 1:

To delete all words after “That Seanad Éireann:” and substitute the following:

“notes that:

- Shannon Group, a commercial semi-state body, is a driver of economic growth in the Midwest;

- Shannon Group, which operates in both the aviation and tourism sectors, has been particularly severely impacted by Covid-19;

- the aviation and tourism sectors are major contributors to Ireland’s economy;

- successive Government policies have recognised and supported this contribution and pointed to Ireland’s reliance, in particular, on international connectivity to secure its competitive position internationally;

- Shannon Airport is an important player in delivering high quality international connectivity, particularly for the Midwest region;

- the Government is committed to balanced regional development; Project Ireland 2040 is a clear manifestation of this commitment and the Government recognises the valuable role that all our State and non-State regional airports play in this regard;

- the Programme for Government ‘Our Shared Future’ recognises the huge value of our aviation sector in supporting economic development, international connectivity and tourism via our airports;

- the Government is committed to enhancing connectivity by ensuring safe, sustainable and competitive air access responsive to the needs of business, tourism and consumers;

recognises:

- prior to the onset of Covid-19, Shannon Group was on a growth trajectory with significant progress made in pursuit of its mandated objectives;

- since its formation in 2014, the Shannon Group has achieved a number of successes including:

- growing passenger numbers at Shannon Airport by 23 per cent (since separation);

- increasing commercial occupancy in the Shannon Free Zone from 40 to 90 per cent and adding almost 1 million square feet of space to the market;

- increasing Shannon Heritage visitor numbers to 963,000 in 2019 from 377,000 in 2013;

- delivery of an €18 million aircraft hangar, the first built in the State in almost 20 years; this investment has enabled the creation of in excess of 1,000 additional jobs

16 October 2020

in Shannon Free Zone;

- Shannon Group supports four in ten tourism jobs in Midwest;

- that in regard to the devastating impacts of Covid-19, in addition to supports announced in the Budget, the Government has put in place a comprehensive suite of cross-sectoral supports for companies of all sizes, including those in the aviation sector, which includes a wage subsidy scheme, grants, low-cost loans, commercial rates waiver (concluded on 27th September, 2020) and deferred tax liabilities; liquidity funding is also available through the Ireland Strategic Investment Fund (ISIF) Pandemic Stabilisation & Recovery Fund;

- the difficult decisions Shannon Group has had to take in recent months to reduce its costs and the impacts of these measures on the employees of the company which are deemed necessary to enable Shannon Group to secure the future of the airport so that it is well placed when the sector recovers from this crisis;

- the critical importance of national and regional connectivity both socially and economically;

the Government commits to:

- undertake an examination of the future viability and sustainability of Shannon Group, and is considering financial supports and any other measures that may be necessary and appropriate as part of a wider review of Shannon Group;

- ensure that Shannon Group is well positioned for the future particularly given the importance of Shannon Airport to the economy of the Midwest region and nationally;

- maintain Ireland's core strategic connectivity as it is essential for us as an island, for export businesses and for foreign direct investment;

- create conditions to encourage the development of new air routes, particularly to new and emerging markets, when conditions allow;

- ensure a high level of competition among airlines operating in the Irish market;

- ensure the regulatory framework for aviation reflects best international practice;

and

- consider further targeted financial supports to help reinstate connectivity, promote regional development and sustainability in the aviation sector; this will feed into the Government's further plans to aid broader economic recovery at the appropriate time cognisant of prevailing public health advice."

(Senator Barry Ward)

An Cathaoirleach: We must now deal with the postponed division relating to the motion regarding the Shannon Group. On Wednesday, 15 October 2020, on the question that the amendment to the motion be agreed to, a division was claimed and that division must be taken now.

Amendment put:

The Seanad divided: Tá, 30; Níl, 16.	
Tá	Níl
Ahearn, Garret.	Bacik, Ivana.
Burke, Paddy.	Black, Frances.
Buttimer, Jerry.	Boyhan, Victor.
Byrne, Malcolm.	Boylan, Lynn.
Carrigy, Micheál.	Craughwell, Gerard P.
Casey, Pat.	Gavan, Paul.
Cassells, Shane.	Higgins, Alice-Mary.
Conway, Martin.	Hoey, Annie.
Crowe, Ollie.	Keogan, Sharon.
Currie, Emer.	McCallion, Elisha.
Daly, Paul.	Moynihan, Rebecca.
Doherty, Regina.	Mullen, Rónán.
Dolan, Aisling.	Ruane, Lynn.
Dooley, Timmy.	Sherlock, Marie.
Fitzpatrick, Mary.	Wall, Mark.
Gallagher, Robbie.	Warfield, Fintan.
Garvey, Róisín.	
Hackett, Pippa.	
Kyne, Seán.	
Lombard, Tim.	
Martin, Vincent P.	
McDowell, Michael.	
McGahon, John.	
McGreehan, Erin.	
Murphy, Eugene.	
O'Loughlin, Fiona.	
O'Reilly, Pauline.	
Seery Kearney, Mary.	
Ward, Barry.	
Wilson, Diarmuid.	

Tellers: Tá, Senators Robbie Gallagher and Seán Kyne; Níl, Senators Fintan Warfield and Paul Gavan.

Amendment declared carried.

1 o'clock

Question, "That the motion, as amended, be agreed to", put and declared carried.

Senator Regina Doherty: I move:

That the report of the Committee on Procedure and Privileges on the amendment of Standing Orders 16, 22 and the deletion of Standing Order 31 be adopted, laid before the House and printed.

Question put and agreed to.

Select Committee on the Withdrawal of the United Kingdom from the European Union: Motion

Senator Regina Doherty: I move:

That notwithstanding anything in Standing Orders:

(1) Seanad Éireann appoints a Seanad Special Select Committee on the Withdrawal of the United Kingdom from the European Union ('the Committee') to –

(i) monitor Ireland's preparedness for all possible outcomes following the withdrawal of the United Kingdom from the European Union,

(ii) examine the impact of the withdrawal on trade connectivity to the rest of Europe, in particular, from potential blockages to the landbridge,

(iii) analyse the impact of the withdrawal on the Irish economy and society in the immediate post-transition period, and

(iv) engage with stakeholders, relevant institutions and elected representatives in the European Union, Great Britain and Northern Ireland, and the United States of America.

(2) The Committee shall consist of 12 members.

(3) The quorum of the Committee shall be five.

(4) The Committee shall have the powers defined in Standing Order 72, other than paragraphs (2), (3), (4), (5), (6), (7), (8) and (9) thereof.

(5) Paragraphs (2) to (6) inclusive of Standing Order 77 shall not apply to the Committee.

(6) Paragraph (2) of Standing Order 84 shall not apply to the Committee. (7) The Committee shall make a final report to Seanad Éireann not later than 31st March, 2021, and shall, on the making of its final report, stand dissolved."

Question put and agreed to.

Senator Paddy Burke: I move:

That, in pursuance of Standing Order No. 169 of the Standing Orders relative to Public Business, the Regional Technical Colleges (Amendment) Bill 2017, which had reached Second Stage prior to the Seanad General Election, March 2020, be restored to the Order Paper.

Question put and agreed to.

Business of Seanad

Senator Regina Doherty: I propose that we suspend for 15 minutes.

An Cathaoirleach: Is that agreed? Agreed.

Sitting suspended at 1.10 p.m. and resumed at 1.30 p.m.

Commission of Investigation (Mother and Baby Homes and certain related Matters) Records, and another Matter, Bill 2020: Committee and Remaining Stages

SECTION 1

An Leas-Chathaoirleach: I will begin by welcoming the Minister and welcoming all colleagues back after a busy morning. Amendment No. 1 is in the names of Senators Higgins and Ruane. I have something to read before I call Senator Higgins. Amendments Nos. 1, 3 to 6, inclusive, 8, 9, 17 to 20, inclusive, and 35 are related and may be discussed together by agreement. Amendment No. 4 is a physical alternative to amendment No. 3. Amendment No. 18 is a physical alternative to amendment No. 17. Is that agreed?

Senator Alice-Mary Higgins: It is not agreed.

An Leas-Chathaoirleach: Does the Senator wish to move her amendment?

Senator Alice-Mary Higgins: No. We need to clarify something before we continue with the debate. This is not to be obstructive, but a large number of amendments are related to the Adoption Authority of Ireland. I am happy for those to be taken together for the purposes of ease of debate. However, amendments Nos. 8 and 9 relate to a different issue, which is the question of whether copies should be made of records. Amendment No. 20 relates to a completely different, separate and serious issue, which is the relationship between the commission and any future tribunal. Those are fundamentally different themes. Amendments Nos. 8 and 9 might be taken together and amendment No. 20 may be taken with a group. However, these are not related to the first set, which predominately relate to the Adoption Authority of Ireland. I am happy for the larger group to be taken together but we need to be clear for the purposes of clarity of debate. Can I clarify whether amendment No. 4 is a material alternative to amendment No. 3 or the section?

An Leas-Chathaoirleach: Amendment No. 4 is a physical alternative to amendment No. 3.

Senator Alice-Mary Higgins: That is fine. It relates to the amendment rather than the section. Is that correct?

An Leas-Chathaoirleach: Yes.

Senator Alice-Mary Higgins: That is fine. I am happy to accept that. I propose that the grouping stand, as such, with the exception that amendments Nos. 8 and 9 are taken separately and that amendment No. 20 would be taken separately.

An Leas-Chathaoirleach: I do not know that we can make that proposal.

Senator Alice-Mary Higgins: We can. People often do it.

An Leas-Chathaoirleach: We have a recommendation on it. I am informed that we can make that distinction and I am happy to accommodate it. We are all trying to ensure the smooth running of the debate. We can take amendments Nos. 8 and 9 separately as well as amendment No. 20. The Senator should please move the amendment in her name and make any comments she wishes to make.

Senator Alice-Mary Higgins: I move amendment No. 1:

In page 3, between lines 20 and 21, to insert the following: “Authority” means the Adoption Authority of Ireland;”.

I am speaking to amendments Nos. 1 to 6, inclusive, and several others. My contribution will be lengthier than I would like because this is such a large grouping. Amendment No. 1 is simply around ensuring the Bill would be well-drafted if my proposal was accepted. Some of the proposed changes are consequential. I have tried to ensure that the Bill would remain robustly drafted.

The fundamental point in this set of amendments relates to the documents being deposited with a body. There remain strong and robust views that all documents should simply be with the Minister until an appropriate process has been put in place to ensure all relevant parties can access them in a way that is appropriate and with appropriate regulations. If these documents and the section of them that include the database and relevant records are to be deposited with a body, then a more appropriate body would be the Adoption Authority of Ireland.

I say as much for several reasons. The Adoption Authority of Ireland was the envisaged repository in the 2017 legislation. As I understand it, there was also far more clarity and detail in that proposed 2017 legislation. This is crucial. I note that although there were other areas of controversy, this was not one of the main areas of controversial focus in the draft 2017 legislation. There was considerable detail regarding how those records would be treated and where they would go. The Bill before us ensures simply a blunt transfer of a database and relevant records to Tusla with no guarantee over how they will be treated, where they will be stored or whether they will be kept together in one place.

The argument in favour of the records going to Tusla is that many relevant documents came from it. Will those documents go back into different filing cabinets throughout the country if they are to be used by Tusla in carrying out its functions? Will we see the great work done in assembling this body of connected work to paint a picture of the serious concerns and abuses in

our mother and baby homes, in effect, scattered?

Under the 2017 legislation, the Adoption Authority of Ireland would hold one of the largest sets of records. The authority holds a large number of the legal records. It does not hold all the institutional records but it holds the legal records on adoptions, including adoptions that were in some cases forced adoptions. The authority has the records from certain homes. We know that the Adoption Authority of Ireland is in negotiations to have large numbers of other records of adoption transferred to it. The authority is in possession of a key piece of the puzzle. This is crucial for adoptees who are trying to trace their records. Yet, the other set of records coming from Tusla and the commission relate to the circumstances that may have surrounded the adoption, whether legal or questionably legal, as it might be. There was a strong rationale for the Adoption Authority of Ireland to be selected in 2017. Crucially, there was also extensive provision for how the authority would do this. There was provision for the authority to maintain all of the records properly with an index. This is vital.

I fully support the other amendments before the House. The Minister may say that we do not know what is in these reports or documents. We have to know what the documents are so that we can know the appropriate way to treat them. Section 11(2)(a) of the 2017 legislation provided for the Adoption Authority of Ireland to keep an index of the records referred to and a searchable electronic database of the records. We know also that the Minister would have been able to issue guidelines in terms of the appropriate treatment of these records. There was a sense that the records and documents were going to be transferred to a place where they would be treated properly. We know the Adoption Authority of Ireland, AAI, took seriously that if it took receipt of these documents it would be regarded as a place of deposit and would be required to keep all of the relevant documents to the standard of a place of deposit, namely, an archival standard, protecting all of the relevant documents and ensuring clarity around how they are preserved electronically. We know that the authority, in the years since 2017, had actively pursued this responsibility and met, for example, with the OPW around an appropriate location for such a repository. It had, for example, visited Germany to look at comparable storage of equally sensitive documents in Germany. It is a serious matter to have these documents transferred to one's care. There is, unfortunately, nothing in this Bill that tells us how, besides setting out what will not be looked at, the documents will be preserved and kept together or whether there will be an index that is searchable such that we can identify documents and know to what they might be relevant, be they relevant to future regulations around access, future archives or a future tribunal.

This group of amendments ask that the Minister replaces the references to “the agency” in the legislation with “the authority”. I have tabled other amendments, which I will come to later. I believe that the Adoption Authority and Tusla, as two of the bodies which will receive subject to access requests from individuals personally and directly affected by these issues, should be in a relationship of data controller and data processor where they can co-operate in ensuring that subject access requests, where one half of the picture might be a legal form to the effect that a person was adopted and the other half might be the circumstances under which a mother signed the document, could be pieced together by them. These are fundamental parts of the puzzle. I hope the Minister will consider accepting the amendments in respect of the Adoption Authority.

Amendment No. 6 proposes that if the documents are not to be deposited with the Adoption Authority or Tusla they be deposited with the Minister. This would allow him to make an appropriate future choice in respect of which body might be best suited to act as a data controller or preserver and maintainer of these records, with appropriate relationships of access subject

to appropriate safeguards attached to the relationship between other bodies, be that a tribunal or Tusla. That is the logic behind the amendments I have put forward. I have spoken largely around the positive reasons that I believe the Adoption Authority is a more appropriate location and the reasons the Minister should have preserved his right to recognise and consider properly what might be the most appropriate public body or bodies, but there is also a concern not just around the absence of the positive measures, which the Adoption Authority had looked to, but the lack of information around how Tusla will act in regard to these documents. There is no clarity around how the documents will be stored, preserved and treated. There is a real concern, unfortunately, of distrust in the way that Tusla has in the past engaged with survivors of institutional violence and adoptees. The interpretation of GDPR by Tusla has been questionable in many cases, not only in terms of information but also in terms of tracing. There has been enormous frustration in regard to what appears to be a culture around the treatment of documentation. I hope Tusla can rebuild its reputation and its relationships with the many vulnerable persons with whom it works and their families. There is an issue of trust in regard to Tusla that needs to be addressed. Had the Minister chosen the Adoption Authority it would have been a gesture of recognition of those very serious concerns which have been expressed by many of the people most affected.

Senator Ivana Bacik: I welcome the Minister and the opportunity to debate this important Bill, albeit that we had proposed an amendment to the Order of Business to delay the taking of Report Stage today. It is most unfortunate we are taking Committee and Remaining Stages today. As expressed already on the Order of Business by Senator Sherlock on behalf of the Labour Party, and other colleagues from across the Opposition group, we are unhappy at the way in which the Bill is being rushed through both Stages today. It is unfortunate and not good legislative practice, particularly when such important matters are at stake.

I support Senator Higgins's amendments. I reiterate her point on the need for a clear rationale as to why the legislation is necessary. I raised on Second Stage that despite the briefing, and the lengthy document we received this morning providing further information on the reason for bringing forth the Bill, it is still not entirely clear precisely what aspect of the commission's data is to be transferred to Tusla and why it needs to be done at this point. I also said that there was a sense of cart before horse. The new document we were given confirms that the enactment of the legislation is to achieve a number of purposes, including to provide a statutory basis for preservation of records of the commission but, as far as we can see, the preservation of records is already provided for under the 2004 Act. We are still not clear why this is necessary, other than, perhaps, to confirm in section 5 of this Bill the existing position under section 43 of the 2004 Act. It is not clear why it is necessary to make that clarification or confirmation if the 2004 Act already provides, as we believe it does, for preservation of the records of the commission.

The second rationale is that this legislation is to provide further for the transfer of a database and related records to Tusla, to enable Tusla to access the database for purposes of discharging obligations and for the purpose of supporting the creation of a future adoption information and tracing service to be established in law. This goes to the crux of Senator Higgins's amendments which seek to provide that the Adoption Authority would have a role in this legislation. The amendments illustrate the difficulty we have with the legislation. We do not yet have an adoption information and tracing service. The Minister has committed to introducing future adoption information and tracing legislation. On Second Stage, I spoke about the immense difficulty we had in the previous Oireachtas term with the former Minister, Katherine Zappone, seeking to introduce such legislation. Many of us worked constructively with her to try to do that but it

was not possible to do it yet we are being told that part of the rationale for enactment of this Bill in this rushed way is to ensure there is support for the creation of an adoption information and tracing service. As Senator Higgins said, we do not know exactly what role Tusla will play in that regard. We have not yet seen any outline or framework of legislation to support this future adoption information and tracing service. In the absence of that, it is not clear why this Bill is necessary or why anything is necessary beyond, perhaps, section 5 to clarify that the records must be preserved. It seems to me extraordinary that there would be any doubt about that. In the absence of this legislation, the 2004 Act would provide a statutory basis for the deposit of the full records of the commission with the Minister. Again, we are puzzled. There has been an opaque aspect to the information we have been provided in that we are not told precisely what information will go in what database and to what authority, be that Tusla or the Minister, or why we cannot provide that the Minister take possession of the entire archive unredacted from the commission. This lies at the heart of our concern.

Senator Higgins's amendments in this grouping seek to address this issue and to provide for a role for the Adoption Authority. It is not clear why the Adoption Authority does not have a role somewhere in this Bill and nor is it clear what Tusla's role will be under the future adoption information and tracing service. I know the Minister and all of us have been receiving immense amounts of correspondence from those who are most directly affected, including survivors and their families. There are heartbreaking stories from relatives who have been unable to access the most basic information about their identity or the identity of relatives of theirs who may have died in homes or been incarcerated in homes, or who were abused in homes. They are being denied access to that information. If this Bill is passed, it will not in any way further their search for knowledge about identity. As with the previous failed attempt to bring forward information tracing legislation, we are once again seeing the Government place privacy rights above rights to information on identity. I know the Minister is shaking his head. I know that is not his intention. Unfortunately, that is how it will look and that will be the effect of the legislation. We have rehearsed these arguments many times in the context of the previous Bill, that privacy should not trump rights to access basic information about people's identity. We know that now and how important this is for survivors and their families. That is why we are seeking to make a series of constructive amendments and why we oppose rushing this Bill through the House.

Senator Mary Seery Kearney: My understanding of what is happening with this legislation is perhaps overly simplistic and I may stand corrected before the day is out. My understanding is that a unique database was created when the commission was carrying out its work and that this database has not been covered by the 2004 Act. The commission itself was founded under the 2004 Act. The 2004 Act prescribes the collection of information and so much of how a commission operates. In the course of carrying out its business, the commission entities discovered that this database is not covered. There is a lacuna about what happens with this database. This legislation is merely to do that, not to do anything else. It is not going to advance the case of disclosure and overturn the 30-year rule. It cannot do that because the information was collected in the context of whatever flows from the 2004 legislation in the setting up of an inquiry.

As much as I desire to support the individuals who want disclosure and I wrestle with how Tusla deals with and decides whether something is third party information, which I intend to make a mission of with the Data Protection Commission, and as much as there are things in this that I want to change, we are here today with the commission having asked the Minister to introduce this legislation so that the database can be transferred. This body of information

was not envisaged. Everything related to this has a horrific, harrowing context. We are dealing with technical legislation and we cannot ignore the wider context that we cannot address that healing or that wound here.

If one goes to the website of the commission, it answers that it was not charged with attempting to resolve tracing. It advised people to contact Tusla or the Adoption Authority of Ireland but it is clear in the division. When one follows the link to Tusla, Tusla's role is in information and tracing, and the Adoption Authority of Ireland's role is in the maintenance of the archive. They have distinct roles and until such time as the Minister creates the entity, as he has already said he will, we are where we are. Tusla will assist in that and because it has the repository of the largest amount of documentation, it makes sense that it would go to Tusla. It is purely technical and cannot address the wider issue. It just addresses the pressing issue that, at the end of this month when the report is made, the commission itself expires and this database could potentially be lost. It is a technical point in law.

An Leas-Chathaoirleach: I welcome the Minister, congratulate him and ask him to respond to the amendments.

Senator Alice-Mary Higgins: On a point of clarification, I suggest that we change the groupings. Amendments Nos. 19 and 20 are effectively alternatives to each other. To save me reiterating all the same points about amendments Nos. 19 and 20, I suggest that Nos. 19 and 20 be taken together. That might ease the Minister's response if that is agreeable to the House.

An Leas-Chathaoirleach: We will try to accommodate that. I call the Minister

Minister for Children and Youth Affairs (Deputy Roderic O'Gorman): I thank the Senators for their contributions and their continued engagement on this legislation over the last weeks. When we last spoke in the House, earlier in the week, I noted that this is technical legislation. As was said by speakers earlier, I acknowledge that while the legislation we are looking at is technical, it reflects a long, grim period in our country's history. This legislation touches on one of a range of legacy issues that our country is still struggling to address. Many fall within my Department and I reiterate my commitment to spend my time as Minister addressing those legacy issues and working with Members. I know many Senators are particularly passionate about those issues. I acknowledge what Senator Bacik said about the haste with which this Bill is progressing. I acknowledge that. It is not my desire to act in this way. The haste is motivated solely by the need to pass this legislation by 30 October, which is the deadline for the Commission of Investigation into Mother and Baby Homes to complete its final report, at which stage it will stand dissolved at law.

I will respond directly to Senator Higgins's points about passing the database to the Adoption Authority of Ireland, AAI, instead of Tusla. While I appreciate the intent in doing that, it is important to reiterate that the majority of the original records are currently held by Tusla and, in practical terms, this Bill cannot alter existing arrangements in that regard. All institutional records held by the commission are copies of original documents supplied by the various bodies to the commission. The Bill does not introduce restrictions in any way to access to those original documents. A transfer to any statutory body such as the AAI would mean that two different statutory bodies would hold the same records, with Tusla holding the originals and the AAI holding the database and the associated copies. Since it would not hold the original records, the AAI would be more restricted in accessing the database. By contrast, the digitised and indexed records could be a notable enabler of Tusla's current services in this area, notwithstanding that

no new right of access to information is being created by the proposed legislation. It is the view of the Department and my view that the duplication that would be created by transferring the database to the authority would be inefficient, it would lead to confusion and it would not serve any immediate benefit.

I am not in a position to accept the group of amendments relating to the AAI. I believe that rather than supporting a move towards consolidating records in a single repository, these amendments would cause further and unnecessary fragmentation in the State's approach to the safekeeping of these records. The appropriate body to retain such records in the long term will be the subject of future consideration in the course of bringing forward new legislative proposals for enhanced information and tracing services.

2 o'clock

I have committed to advancing that legislation separately. I will speak more about that matter in a moment. In the interim, Tusla will be fulfilling an important public service in safeguarding this database in the immediate term. I emphasise that no decision has been taken about the long-term repository for this database or, indeed, the wider suite of records from various sources that we address in these legacy issues. I know there are proposals about wider repositories coming in through some of the amendments that will be proposed later, but no decision has been made at this point.

From a practical point of view, it is worth noting the organisational capacity, as referred to by Senator Higgins. Tusla currently has significant resources available to undertake its existing functions under information and tracing. It has dedicated approximately 60 hours of whole-time equivalent social work solely for the maintenance of its information and tracing services. The Adoption Authority of Ireland has 29 employees in total. That is the full complement of staff of the authority. Tusla has the capacity to make use of this particular database for its existing statutory functions. It is the best place to get value from this database while we look at the options for a longer-term repository.

Senator Bacik asked about the rationale for why this particular piece of legislation is necessary. Under the 2004 Act, once the commission its final report and stands dissolved in law, its archives are sealed for 30 years. That is not provided for in this legislation, and that is important. The 30-year rule is not coming from this legislation. It comes from the original 2004 Act under which the commission was established in 2015. Decisions made by previous configurations of the Houses of the Oireachtas brought us to the situation with which I am now dealing.

If this legislation is not passed, the valuable database that the commission has created will be part of that archive and will be sealed within it for a 30-year period. However, if we pass this legislation, we maintain this database outside the sealed archive and giving it to Tusla will allow it to be used by the agency for its current functions, provided for under legislation, and it will be available to create improved information and tracing legislation in the future, as we have all said is necessary in this country.

I accept Senator Bacik's point that the previous Oireachtas was not able to deliver on information and tracing but I think we must take the opportunity now to protect the database. It would be a mistake not to undertake what we are trying to do, to protect the database and not have it left in the sealed archive on the basis that we have not done information and tracing yet. We cannot give up on getting good information and tracing legislation. As I said, I am commit-

ted to working hard with everybody to deliver that.

I spoke to the former Minister, Katherine Zappone, shortly after I took up this role. She said that one of her biggest regrets was not getting legislation on information and tracing passed because it is important for many people. It is my commitment to get that legislation passed and I believe that having the database available will be of significant benefit in that context.

Senator Alice-Mary Higgins: I want to address a couple of the issues to which the Minister has spoken. I also wish to add my concern about the manner in which this has been done. I suggest, frankly, that notwithstanding the urgency the Minister sees, there is still no excuse for Committee and Report Stages to be taken together. It does not allow for any real concerns. There are significant legal and legislative concerns, not simply concerns about matters of justice or ethics. By taking Committee and Report Stages together, the Minister does not allow himself the opportunity to take those points on board and reflect on them to ensure he produces an adequate and robust piece of legislation.

Perhaps even more concerning is the fact that we know that Members of the Dáil were given a deadline of 2 p.m. today to submit amendments. Unfortunately, there will likely be a large degree of replication in those amendments. If an issue of genuine legislative concern that requires a nuanced response during the debate here on Committee and Report Stages emerges, no Deputy will have the capacity to reflect those issues in a proposed amendment. Their part of the process has been effectively short-circuited.

Legislation is, of course, important and needs to be dealt with in a timely way but there are questions about the urgency relating to this legislation, as others have spoken about. We got notification that the Bill had been reprinted to incorporate additional commas. I would suggest that it needs more than that in terms of extra punctuation. It needs punctuation that would allow opportunities for thought and reflection so that it can be proper and robust to its function.

The Minister did not address one of the serious concerns that I raised. I want a response to these matters before I press forward. In what manner will these documents will be stored? One of my rationales for preferring the Adoption Authority of Ireland was that we had guidance as to how the authority would take the documents. The authority would maintain the documents, keep them to an archival standard and would include a crucial index explaining what is in the sets of documents so we know from where they came. The database is a valuable tool but there had been a commitment made to the inclusion of an index and a searchable electronic database. It was envisaged in previous legislation that if these documents had gone to the Adoption Authority of Ireland, there would have been a database which was of use not simply to one body, as envisaged here - namely, Tusla - but to other bodies, as appropriate and regulated for.

I esteem the work and thinking of my colleague, Senator Seery Kearney. However, if the database is the issue and this legislation is to allow for the database to be transferred, there is nothing disallowing the database to be shared with the adoption authority, which holds a large number of relevant records, as well as with Tusla and, crucially, the Minister. One of the weakest points the Minister made was that there is some principle of duplication and it would be inefficient to have two copies of this documentation in the world. That was the logic. It assumes, if we are legislating to transfer the database, that we cannot legislate to transfer it to the Minister and the adoption authority as well as to Tusla. If we want to talk about efficiency, how inefficient is it - not to mention cruel - that individuals who seek information have to go from body to body to body, submitting different requests, putting together piecemeal records that

may include burial records, records of committal and legal records of adoption? It is inefficient not to use a document and tool that would allow bodies to respond to applicants appropriately and identify documents the body has that are relevant to the applicant and inform the applicant that there are other relevant documents elsewhere, in that way giving them an arrow. How much additional inefficiency and difficulty are we piling on individuals by not having a usable index or database?

I disagree with the Minister's analysis regarding the database and think it should have been shared. I intend to press these amendments but, before I do, I would like a response from the Minister about the future and what might happen next. The lacuna is that between now and whatever future arrangements might be put in place we do not know what will happen to these records. When these were going to be transferred to the Adoption Authority of Ireland we knew what would happen. We knew they were going to be kept in a certain place, to a certain standard, in a certain situation and they would be kept together. Is there anything in this Bill that stops Tusla, for example, deciding to scatter these copies to a number of different locations?

Senator Ivana Bacik: I thank the Minister for engaging on the question that I had asked about the rationale for the Bill in the context of these amendments tabled by Senator Higgins. I understand that he said, and I think the concern was expressed to the Department by the commission so it would be helpful to see even an outline of the commission's legal advice, the commission was concerned that if legislation was not passed that the database or any documents it handed to the Minister or his Department, under the 2004 Act, would then be sealed for 30 years and inaccessible for any future purpose and, therefore, legislation was necessary to deal with that aspect. Why this legislation? Why not deal with the problem disapplying the 30-year rule? If that is the plan in any case, because there is going to be a future information and tracing service, which, apparently, will be conducted by Tusla in line with future legislation, then why not disapply the 30-year rule in this legislation?

The 30-year rule is, as the Minister has said, a legislative provision passed by a previous Oireachtas. It is perfectly possible for this Oireachtas to disapply that legislation. Indeed, without getting ahead of ourselves on Committee Stage, the Labour Party's amendment No. 12 seeks to disapply the 30-year rule by enabling the agency to provide "information about a deceased person to a brother, sister, son, daughter, nephew" and so on of that person. We are saying, let us just amend that provision in the 2004 Act. I know it is there and I know, as the Minister has said, that that is the default if nothing were done but something can be done, that is, an amendment to the 2004 Act to disapply the 30-year rule.

The crux of the matter is that very many people who have contacted us feel strongly about this. We have been told in a very useful data protection assessment document that we received from the Department at 10 a.m. that there are 60,000 records identified to be transferred in the database concerning individual data subjects, both dead and alive, who passed through 15 of the institutions under investigation by the commission. If one is one of the survivors or a family member about whom there is data held, how frustrating it is to know that the data is going to be held by the Minister but sealed for 30 years, and by Tusla for some undefined period yet a survivor or one's family member will have no access to it and no right to see it or even know what it is. This is hugely important. This is not centrally about the testimony given by survivors to a confidential committee. This is about the 60,000 records, as the data protection assessment says, that relate to a huge array of information, of paper records, records obtained under discovery, and records held by the institutions, by the State, by the religious and so on. We are saying that people should have access to a huge amount of information where it identifies them or a

relative and where it is their information. How frustrating it must be and paternalistic of us to continue to hold that and say, “We are going to allow you access at some future point but we don’t yet know how we are going to do that”.

The data protection document sets out very squarely that:

The proposed legislation will not expand access to information for individuals. This is a key issue for most stakeholders who seek access to birth and early life information but are prevented from accessing it due to constitutional issues relating to the balancing of rights.

That is the obstruction that we faced before trying to achieve a resolution and legislation on this issue. I do not think that we should give up on it. Absolutely not and I really agree with the Minister on that. I am heartened, as I know that the survivors will be, to hear his commitment to bring forward that legislation. However, the problem for survivors now is that this legislation simply compounds the existing ban or obstacle to their seeking or obtaining information, which is the real problem. I have been contacted about this matter by so many people. One of these people is somebody for whom I have huge regard, as I know the Minister does, and that is former Tánaiste, Joan Burton. She did a huge amount of work, along with the former Minister, Katherine Zappone, to bring forward information and tracing legislation.

There are huge concerns that this legislation simply compounds the existing problem. It may be aimed at, and the rationale behind it may be to deal with the 30-year sealing rule. However, it does not address the rule but re-enforces it and provides for a transfer of a database to Tusla. It does not indicate how Tusla will use that or, crucially, what access people will have. A simple solution is to amend the 30-year rule as it applies to this database in this legislation. I would have thought that was the better approach to take.

Deputy Roderic O’Gorman: I thank the Senators for their engagement. As regards the treatment of these records by Tusla, when my Department has engaged with Tusla on this we have engaged with them on a technical level, and given them an indication how the database could be used, and how it will facilitate their existing functions under the existing, as we all accept, insufficient type of information and tracing that we have in this country. As Senators will know and seen in the budget, my Department allocated a significant amount of money to Tusla this year. Part of that allocation was to improve Tusla’s ICT capacity and part of that will be its ability to maintain this particular database. I am confident that Tusla will use this appropriately and that it will benefit its existing information and tracing capacities.

Coming back to the point made by Senator Bacik as regards the 30-year rule, the reason we are acting swiftly is because the commission is to report on 30 October so we need to get this issue addressed by then. A potential change to the 30-year rule has implications for other commissions of inquiry. It has implications for those who provide a testimony to this particular commission of inquiry. So, there are a very wide range of issues that would have to be addressed in the context of changing the 30-year rule. The direction that we have decided to proceed with was this bespoke legislation that ensures this very valuable database is not put into the archive and sealed for 30 years but is available now, increases value in what Tusla can do under its information and tracing powers, and is available for that future legislation. I believe this is the correct way to go.

I fully agree with Senators that it will be a big piece of work but it is absolutely essential that this Oireachtas undertakes the delivery of information and tracing services. The legislation

will allow issues to be addressed for the many people who are frustrated, and have been for many years, by not being able to make those connections with their birth mother or siblings, and protecting the database will be of real benefit to that.

Amendment put and declared lost.

An Leas-Chathaoirleach: Amendment No. 2 is in the names of Senators McDowell and Boyhan. Amendments Nos. 2, 7 and 21 are related and may be discussed together, by agreement.

Senator Michael McDowell: I move amendment No. 2:

In page 3, between lines 21 and 22, to insert the following: “ “Confidential Committee” means the committee established at paragraph (3) of the terms of reference as recited in the Order of 2015;”.

Section 1 lists definitions and states, “the databases of residents of the institutions (specified in the Appendix to the terms of reference of the Commission set out in the Schedule to the Order of 2015) created by the Commission.” Does the definition include notes of testimony given to the confidential committee by voluntary witnesses?

Deputy Roderic O’Gorman: No.

Senator Michael McDowell: That was my understanding too. The database that is going to Tusla has nothing to do with an individual who, in response to the appeal by the commission, came forward to give the confidential committee information about their experiences. Is this going to be transferred to Tusla as a database? I take it that it is not considered a related record. I wanted to be 100% clear on that because I did not want lines crossed.

Whatever about the Tusla issue and whether it is an appropriate interim resting place for this information, bearing in mind its role in tracing and the like, my amendment No. 2 is concerned about information given to the confidential committee. As the Minister will see, this amendment consists of identifying the confidential committee, for the purposes of later amendments, as the one established under the terms of reference of the commission.

In that context, it is important to put on the record what the confidential committee is. It is a separate subgroup of the commission. It is not the same as the commission in its entirety. Members should remember that the Commissions of Investigation Act 2004 gave, for instance, the members of a commission of investigation the right to summon witnesses, cross-examine them, demand they produce records and, effectively, to come as voluntary or involuntary witnesses before a commission. If I were running one of these institutions, I would be liable to be summoned, asked questions and to produce records I have on any of the institutions mentioned in the Schedule.

The idea of the confidential committee was to achieve an entirely different and separate purpose. It was not for the purpose of summoning people to extract information under powers of compulsion. In 2004 that was the power given to the commission. The confidential committee was a non-compulsory process, whereby people who had a picture to paint for the commission could do so separately while not being cross-examined, told to bring records, birth certs, their child’s birth cert or whatever correspondence with adoption societies. This was for people who were invited to participate in a limited way in the commission of investigation’s function to give

them an opportunity to tell their story in a particular way.

Paragraph 3 of the terms of reference reads:

The Commission shall establish a Confidential Committee to provide a forum for persons who were formerly resident in the homes listed in Appendix 1, or who worked in these institutions, during the relevant period to provide accounts of their experience in these institutions in writing or orally as informally as is possible in the circumstances. Subject to the requirements of Section 8 of the Act, the Commission may appoint persons it deems to be appropriately qualified to be members of the Confidential Committee.

It is a separate procedure from the mainstream investigatory function of the commission. It then defines what the purpose of this confidential commission committee is:

The Confidential Committee shall-

(a) operate under the direction of and be accountable to the Commission, [it clearly is not an independent republic]

(b) provide in its procedures for individuals who wish to have their identity remain confidential during the conduct of the Commission and its subsequent reporting, and

(c) produce a report of a general nature on the experiences of the single women and children which the Commission may, to the extent it considers appropriate, rely upon to inform the investigations set out in Article 1. [Its mainstream investigatory activity]

This was a standard form of commission of investigation to look into all of the issues in Article 1 of the terms of reference. However, this was a separate process by which people would not be swept into that, brought along as witnesses and rights to cross-examine and so forth conferred on people. Instead a separate confidential committee was put in place, the purpose of which was to allow people who were in the homes to give their account of what happened in a manner which was outside the normal cut and thrust of a commission of investigation. It should be remembered that a commission of investigation is entitled to subpoena people, documents and ask questions which one must answer. One can be certified for contempt if one refuses to do so. It is a serious investigatory body. The confidential committee was, by contrast, a wholly different animal. It was a receptive, informal venue for people who were not going to be treated as witnesses in the main investigatory process to allow them to paint a picture of what it was like to be or work in those homes.

For that reason, the database Senator Higgins and others are concerned with is, as the Minister has now confirmed, entirely separate from this. There is no crossover between the database and this material. That is why I, like many Members, believe it is important that the database be preserved. It is important for those who were adopted, fostered or brought up in these homes to have the right to know what is in the database. I agree with the Minister that there are constitutional issues of balance and so forth. I am quite sure what the former Minister, Katherine Zappone, attempted to do, and what the current Minister is committed to doing, can be done and that there can be a mechanism to deal with those people. I have no problem with all of that. I do not think the Minister intends kicking the can down the road for 30 years. I accept his word that he is working hard to deal with all of the issues, including the right to know one's real identity, subject to some other countervailing rights which will have to be balanced out by some kind of mechanism. I wish the Minister well in drafting that legislation.

Having said all of that, some Members think I am being overly legalistic. I am not. People were invited to the confidential committee on a particular basis, namely of representations which were made to them. The representations were set out in the leaflet which invited them to participate. The leaflet stated:

An important part of the Commission's work is the establishment of a Confidential Committee. This Committee will operate under the direction of the Commission.

The main purpose of the Confidential Committee is to listen to the experiences of those who have spent time in Mother and Baby Homes. These can include mothers, children, nuns, workers, occasional workers (e.g. delivery men, painters etc.) and visitors to the home.

This Committee may be suitable for you if you wish to have your experiences heard in a sympathetic atmosphere by experienced people and you do not want any person or institution to know that you are giving evidence to the Commission.

Nothing could be clearer. It was stated to people that they were not witnesses, their names would never appear in a report, no one would ever be given the right to cross-examine them or challenge what they were saying, and they could come in and quietly tell their story, totally anonymously.

There were told the meetings of the confidential committee would be in private and that they could bring a friend with them but they would have to do the talking themselves and they could not allow the friend to paint the picture for them unaided. They were told they would be given travel expenses and that they would not need legal assistance but that if they wanted a solicitor with them that they could. They were told that after their application form to give evidence to the confidential committee was received that they would be contacted by a witness support officer who would agree a date and a time for them to meet the committee and make necessary arrangements for travel or accommodation, and who would meet them when they arrived and help them with processing and reimbursement of expenses and so on.

Under the heading, "What will happen at the confidential committee?", people were told:

You will be asked to describe your experiences. You may be asked some questions in order that the Committee can collect as much information as possible. Any person accompanying you will not be allowed to describe your experiences for you because it is your account that the Committee wishes to hear. However if you need to, and with the agreement of the Confidential Committee member, you may ask your companion to assist you in giving your account.

There will be one Confidential Committee member in the room and another experienced person taking notes. If you agree, an audio recording will be made of the meeting so that the members can have as full an account as possible to assist them in preparing their report.

Audio recordings were made on tape but participants were assured that the tape would be destroyed once the confidential committee member was satisfied that they understood what had been told to them.

The terms of reference continued:

What sort of findings will the confidential committee make? The confidential committee will make a general report, which won't name you or any specific person or institution.

The confidential committee would anonymise what it heard and say something like, "We found that mothers were frequently treated this way or that way, or ill-treated in this thing, or deprived of access to their families and so on." The information was used to aggregate a general report, not to say this particular man made someone pregnant or this particular parish priest had someone else brought to a home, for instance. One can imagine the kind of material that would be set out by an individual so many years later. Most of these cases happened quite a long time ago. According to the terms of reference, "This is because people who go to that Committee will not wish to have any information about them given to anyone outside the Commission or to be questioned by anyone outside the Commission." That was the basis on which those people participated. They were volunteers, they were given an assurance and that was of anonymity, that their identity would not be revealed. They were told:

No report on anything you tell the Confidential Committee will be given to the authorities, except where the Committee has reason to believe that: a serious crime has been committed; a serious risk to a person's life exists; there is a current risk of child abuse. In any of those situations, we are obliged to report the matter to the Gardaí or to TUSLA, the Child and Family Agency.

They would know that if they made a direct allegation of, say, rape against somebody that it could be reported by the commission, but short of that they were told that everything they said was personal to them and would be protected.

What myself and follow Senators who are putting forward this amendment and those related to it want to ensure is that they will not have the guarantee of anonymity given to them broken and that they will have their rights upheld. They were not told that everything would be recorded, put into an archive which would go off to the Department and after 30 years become part of the National Archives of Ireland and subject to the procedures of the National Archives or that they would be released or not released as the case may be. There are protections under the National Archives Act 1986 for the rights and reputations of people, so it is not the case that everything automatically is thrown out into the public domain under the 30-year rule.

I want to give the commission, before it winds itself up, the right for people to remove their names from their testimony, if that is what they want to happen. If the picture they painted of their own family at home, the circumstances that drove them to the home, the failure of people to help them was a highly specific picture, the amendment would give them the right to say that they did not want that to go to the National Archives as they had provided the information on the absolute understanding that they would never be identified, whereas the commission is actually storing away the material with their name on it in contravention of what they were told. I understand that the commission intended to anonymise the material, not destroy it. It should be the case that a black line goes over any names or addresses or information that would clearly identify who respondents were if that is what they wanted. This and the related amendments aim to bring about not only what is legally acceptable but also morally demanded, namely that the State, through an agency, having established this confidential process on the guarantee of anonymity, would honour its side of the agreement. The commission of investigation is a State body established by statute. The State has told people that if they come in and give this picture, they will never be identified. Then, after the event, when the commission indicated its desire to anonymise its material, the State told the commission it could not redact the material

in any shape or form and that the people's names must remain on the records and be sent to the National Archives. I ask Members and the Minister what useful purpose is served by that. If one gives someone a solemn undertaking and then, as section 5 does, prohibits the commission from ensuring the anonymity will be perpetuated by simply putting a black line through various portions of a person's volunteered testimony, what harm is done? Those people could go out onto O'Connell Street tomorrow with a loudhailer and tell the world the same story. It is not as though their rights would be infringed by it. Every one of them is free to write a letter to the paper or to call "Liveline" and give an account of what happened to them in any of these places. They could write a book or do whatever they want. They are free to do that but when they are invited into this process on the basis that they will not be identified, what useful purpose is served by not allowing the commission to go back over those records and give truth and life to the commitment that was made to them by simply taking out a black pen and obscuring who these people were? It does not affect people tracing their ancestors and it simply does not affect the rights of survivors of these institutions one bit. It does not affect the rights of any third party that these accounts are anonymised and that a redaction of that kind takes place. I know this may have nothing to do with the hundreds of emails we have received from survivors who are unhappy with this Bill and I have some sympathy with what they are saying, but I am making a different point. I am talking about the 500 or so people who responded to this process. I am asking that as a matter of honour, having established the commission and this confidential committee, these Houses do not renege on their commitment to those people by asking them to accept the fact that what they said in total privacy and on a guarantee of anonymity is now going to be preserved forever so that at some stage somebody can have access to that material and identify them from it.

I will be interested to hear what the Minister has to say about this but I cannot see what good will come from this. All of those 500 people are free to go on an RTÉ programme, if they can get invited on, and give their accounts. All of them are free to write a letter to a newspaper or set up a website and give their accounts if they want to do so. Here they were given an opportunity to paint a picture with a solid guarantee that they were free to say whatever they wanted because they knew they would never be identified as having interacted with the commission. I cannot see why we should withdraw that total anonymity from them.

These amendments are attempting to negate certain parts of section 5. Section 5 of the Commissions of Investigation Act 2004, which I was responsible for bringing before the Houses, rightly says that because it was assumed that all evidence was evidence before a commission, all records received by it were part of the record of its transactions. It was assumed that, at the end, all of that material and all records of a commission of investigation would go to the Minister, just in case there was to be a further tribunal of inquiry. Otherwise they would be given over to the National Archives of Ireland in the normal way as a departmental record and be subject to all the protections that apply to them. It was assumed that would be a perfectly reasonable thing to do. I can say for certain that at the time of the Commissions of Investigation Act 2004, nobody had in mind that tacked on to one of its terms of reference would be a process that did not amount to the giving of evidence, that was outside the normal cut and thrust of giving evidence and being questioned about it, and involved being forced to give evidence and being forced to do this, that and the other.

It is important to note that if in sworn evidence before a commission of investigation, somebody accuses another person of abusing him or her, that person is entitled, as a matter of fairness, to rebut that evidence. All of that is completely irrelevant to the confidential committee

accounts given by these survivors. Section 5 reads:

For the avoidance of doubt, the obligation under subsection (2) of section 43 of the Act of 2004 to deposit with the specified Minister evidence received by, and documents created by or for, the Commission (other than the database and related records) is an obligation to so deposit such evidence and documents without redaction therefrom.

What the Minister has in mind with this Act is to prohibit any redaction in support of anonymity. I cannot see why that is necessary and I cannot see what is unjust about a redaction which the commission thinks is fair. I cannot see how anybody could be prejudiced by that or how upholding the rights of those 500 people who came in prejudices the public in any way, shape or form. Therefore, I ask the Minister to look at this in that light.

These people were told that the accounts they gave would not be open to challenge. In other words, they were told that if one accused another of having done something to him or her, that accusation could be freely made but there would not be anybody coming in to say that the accusation was false. They were told that what was said would just be taken on board in creating a general report for the commission. That is what it is there for. I ask the Minister to explain to the House what good will be done by this. I am not asking that everything be redacted. I am only asking that the confidential committee reports be redacted if the commission thinks that amounts to delivery on its representation that there would be anonymity. I ask the Minister to explain to the House what good purpose is served by prohibiting the commission from taking out the felt marker and removing the names of the people who have created these records.

Senator Sharon Keogan: I welcome the Minister to the House. I want to express my empathy and heartfelt compassion for any mother or child who suffered in any institution. I say that, not only as a Senator, but also as a mother and foster parent. I want to put on the record of the House that I appreciate the important work of the commission in investigating the matters within its terms of reference and drafting a final report with its findings of fact. The records and reports of the commission will, I expect, be an extremely valuable resource. I am sure all Members of the House can agree on these three points.

I am sure all Members can also agree with the principle that if someone says something to them in confidence, and an assurance of confidentiality is given to that person, then it should be honoured. I am sure we can all agree that is honourable and the decent thing to do. The amendments proposed by Senators McDowell and Boyhan honour and give effect to legal commitments of confidentiality given to people and are in harmony with the existing legislative framework of data protection and associated fundamental rights and freedoms.

If we look at the statutory instrument that established the commission, it clearly reads, “The Commission shall not seek to provide an account of any individual case in such manner as to intervene in any effort by any individual to resolve their identity or trace a birth relative.” The statutory instrument also reads, “The Confidential Committee shall [...] provide in its procedures for individuals who wish to have their identity remain confidential during the conduct of the Commission and its subsequent reporting.” I have sympathy for all those seeking to trace a birth relative or to resolve their identities. I understand legislation will be introduced by the Minister to address this in the future. We should also honour the commitment to confidentiality that is enshrined in law and that was given to witnesses who gave testimony and helped the commission. It would be a betrayal of these people, women and mothers who assisted the commission on that basis if we were to renege on that.

The amendment proposed to section 2 by Senators McDowell and Boyhan is necessary to ensure these people are protected. We cannot in good conscience permit records created by the confidential committee to be deposited with Tusla in an unredacted format without the explicit prior informed consent of the people who gave that evidence. The deletion of section 5 of the Bill and its replacement with the amended section 5 drafted by Senators Boyhan and McDowell is also necessary to give full effect to the legal guarantee of confidentiality given to people participating in the work of the confidential committee. The commission should have the power set out in the amended section 5 to redact the personal data of those people who gave evidence in confidence.

It is in the best interests of the commission and all those involved in this work to defer dissolution until 30 November 2020. We can all agree that the administrative work of the commission is too important to be rushed. For this reason I support the amendment to section 6 of the Bill put forward by Senators Boyhan and McDowell. I respectfully ask my colleagues in this House to consider supporting amendments Nos. 2, 7, 21 and 23 which honour commitments of confidentiality that were part of the legal foundation of the commission in the first place.

Senator Victor Boyhan: I welcome the Minister to the House. Having followed his career somewhat, I do not doubt his credentials. I believe he is a caring, compassionate and honourable man as well as a caring, compassionate and honourable politician. For some people those are sometimes different things. I understand the difficult position in which he has been placed. Ramming this legislation through would not have been his choice. We have seen two pieces of legislation similarly rammed through in recent times. It is not the way the House should work. I am also conscious that during the passage of both the Forestry (Miscellaneous Provisions) Act 2020 and this Bill the Business Committee decided to waive pre-legislative scrutiny and consent to this process. That is disappointing.

My first appeal is to Members of this House who are in parties represented on the Business Committee. The Business Committee's members have their own decisions and prerogatives, but they are not isolated from the political groupings in this House. I ask every Member of the Seanad whose party is represented on that committee to bring it to his or her representative's attention. A situation where the Lower House decides the process and then inflicts it on us is not good for either House. All Members, whether they are Independents or members of parties, have contacts on that committee.

I would like to discuss amendment No. 2. This is a particularly difficult point for me. This is seen outside Leinster House as a measure to constrain people. I am not in the business of closing anybody down. The truth must be told. Many people have fought hard for justice. However, I am also conscious that many people have gone down the route of the redress scheme, assisted with the work of former Senator Martin McAleese's interdepartmental committee or testified before the Ryan commission. They told those bodies their unique stories and circumstances and talked about harrowing abuse, within families and outside of them, within church and non-church organisations and within the voluntary sector, private and public schools, scouting groups and many other sporting organisations. Handling these sensitive issues was always going to be difficult.

I was in a school in Blackrock. We know about the harrowing experiences many people had at the hands of an infamous swimming instructor there. We read about this regularly and I do not intend to rehearse it today other than to say that some very brave national sporting heroes were subject to terrible abuse. They were not able to come forward for years because they

feared the ramifications and intimidation within their community and their families. Many only came to terms with this many years later through their partners helping them to come forward. That was many years too late. In some cases the people concerned had either moved on from a sports club, parish or organisation or had simply died. Victims and survivors who had gone through such harrowing ordeals never had their opportunity.

Timing is everything. People need to be able to tell their own stories and be believed. People who went before the Residential Institutions Redress Board were sworn to secrecy. We have passed legislation making it an offence for people to talk about how they engaged with the redress scheme and the compensation they received. I accompanied a woman who had come from the UK to the redress board's office in Clonskeagh. She had €40 in her pocket. After two or three years she was eventually awarded €1,300. She had no accommodation, no support, nothing. She asked herself why she had come. She was trying to shed light on something and assist others.

As Senator McDowell outlined, the commission included a confidential committee. I know people who appeared before this panel and shared their harrowing stories. I have spoken to them this week. The other day, I personally told the House that I grew up in an institution. That institution hosted the infamous and terrible vaccine trials in 1961, 1962, 1967, 1968, 1969, 1971, 1972 and 1973. The Minister will know from the brief of the judge who is the chair of the commission that those trials are part of its terms of reference. No-one has discussed the vaccine trials. They came to light because two brave women at UCD volunteered to give information that was brought to their attention and to my own. Thanks to Mr. Kevin Rafter, a very famous journalist at RTÉ, a series of documentaries was made about the trials. Thanks to the librarian at the Royal College of Surgeons in Ireland we were at last able to access the British medical journals and reports outlining these vaccine trials, having been denied access for 20 years. We also learned something of the adverse reaction some children had. We learned that some of them died in care having been subject to vaccine trials.

I was sitting in the Gallery of this House when the then Minister for Health and Children, Deputy Micheál Martin, spoke eloquently about the terrible ordeal. As in this case, he said a few institutions would be randomly sampled. In that case the Bessborough Mother and Baby Home was chosen because it was in Cork, along with a place in Galway and several other institutions with which I was involved. That report was ultimately never published. It was challenged in the courts. The judgment was to be appealed by the Government, but that was never pursued. In the end the report was found to be *ultra vires* its narrow remit, which we were advised was done on purpose. A very famous politician and eminent lawyer, then Deputy Alan Shatter, spoke eloquently about how children's right to bodily integrity is enshrined in our Constitution. Up to now, no-one has been brought to account. Two of the major people involved are now dead. We knew who they were and they accepted that they were involved in some of these trials.

The point I am making is that information is critical. Those two brave women at the UCD school of biomolecular and biomedical science in Belfield put critical information into my hands and those of several politicians in this House. They only acted on the basis that they would be protected and given a guarantee that it could not be traced back to them. Many years later those women are still alive and are happy to go public, but that was not the case then. They feared for their jobs. They revealed information from an Irish university to highlight wrongdoing.

While I am not in the business of suppressing anything or protecting anyone, I am always conscious of the difficulties that go with that. Perpetrators and people who did bad deeds must always be brought to justice.

3 o'clock

I am also conscious of the fact that if it comes to anyone's attention that there is sexual, physical or emotional abuse or it is likely to reoccur, there is now an onus and a responsibility on such a person - he or she may be a Member of the Oireachtas, a member of the Judiciary or a member of the public - to report it to the appropriate authorities and to assist An Garda Síochána.

The Minister, Deputy O'Gorman, will recall that when I spoke to him last in the House I said I looked forward to this final report being published and going to the Government and the Attorney General. I hope that the Minister will give a commitment to that effect. He did not respond on the previous occasion. Within days, this report should go to the Garda Commissioner and should be examined in detail, line by line, because there may be a certain line or course that may have to be pursued. That is only right.

We are not hiding anything. I do not support anyone. However, I know people who have appeared before this panel and I recognise that they have brought highly sensitive information to it. I will not speculate on the type of information they brought. I touched on the drug issue. It is here in the transcript and the Minister will recall that. We will have an opportunity in a month or two to have the report and I look forward to taking that report up in my hand again. I look forward to teasing all that out with the Minister and recalling this very day on which I am speaking to him and to the House.

Ultimately, people came forward. I know of childcare workers, tradesmen, gardeners and cooks who were decent honourable working people in communities who worked in these institutions. I know of farmer helpers in Tuam who reported difficulties in relation to Tuam. When one looks at Ms Catherine Corless - that was part of the remit in Tuam - it took brave and courageous people in that community to say that enough is enough, times have moved on.

I had two men in here last year both of whom came from Tuam and it so happened that it was the birthday of one of them. It is always nice to tell the story, but I did not know it at the time. I always welcome people to this House because this is the people's House. This is our House, the nation's House. We had our meeting and they talked about the great difficulties they had and the hurt, the disappointment and the setbacks. The one point they kept making was about being believed. When a person tells his or her story, it is so important that he or she is believed. I asked them to come up and have something to eat and have a pint. They were thrilled. This was their House. One of them said that it was his birthday that day. I thank the catering staff because they went away and came back with one muffin and a candle. We laughed and we cried, and he cried. He talked about his first birthday cake. Some of the staff who are listening here today will know because they were there. We laughed and we cried. We thought what a human feeling it was. We all need to be loved. We all need affirmation. We all need support. We all need encouragement. When we are talking about people, many of whom are outside the gates here today and thousands of whom have written to us, the Minister should remember that they want to be believed and they want to be supported. We should cherish "the children of the nation equally" and support them.

So much happened to these people. They were entrusted to the care of the State, to the Church, to a charity or whatever. Many of them were taken away from their families. I said the other day that these were not all single mothers between the ages of 16 and 19 with one child. Mothers and fathers who were married in this State had their children wrenched away from them and were not supported. Mothers, fathers and children were split because of other families' interest in money, inheritance and land and all the historic things that go with our obsession with owning and property and inheritance. It is too simplistic to say it is a boy or a girl, or it is a split family; it is not. There were many families gone.

Many of these children were kept in homes. I tell a story of a man who came to see me only a few weeks ago. His mother left him in care. She went away and got married. She came back some years later, having talked to her partner, who said they should go back and take that little boy out. He said, "He is yours; he is ours." What a lovely thing to do. He said he wanted to support her in it. They arrived into the institution in question in Dublin to be told he was adopted. Many years rolled on. By strange coincidence, because we live in a global village, he stumbled on his mother through a different set of circumstances. It was an unusual name and I suppose that is what helped. His mother said that she had a letter and could produce it. She produced the letter, which stated that he was adopted. When she asked could she go and see him, they said she could not, she would be disturbing the child, he was settled now and she should leave him alone. She was robbed by establishments in this State of that opportunity of reunification and she has the evidence. Where is the support for her?

Behind it, we all have a story to tell about our own lives and families. We have our own experiences with all of this. The one thing I can say, having lived through this experience and tried to be as positive as I can, is that it has politicised me. It has made me aware of the disadvantage and injustice faced by other people. I am on fire at times when I see injustice around me where I do not see fair play.

We need to remember that the people we are talking about are getting older. In 30 years, I will be nearly 90. I will not be hawking around for my information. Many others are gone. They are broken. Many of these people's spirits are broken by a wall of State and church. I acknowledge there were good people in the church and good people in the State, but many people have had this wall up against them and they cannot get this information.

Let us keep the messages here simple. The reality is many people see Deputy O'Gorman, as the Minister, locking up all their documentation for 30 years. They see the Minister and his Bill blocking access to certain information, evidence and documentation which has been collected by the commission of investigation into the deaths of children and mothers who had terrible experiences. People and staff who came to the confidential panel or committee said that they could bring the members of the panel or committee to Tuam and that they knew what happened. I think of the man who told a woman in Galway not to worry because he tried to give her child a good burial after the nuns sent him away with her child in a wheelbarrow. Rather than incinerating the corpse - this was out in Salthill in Galway - he buried it beneath the compost heap. That is a true story. How did I learn that story? A woman I know, who is a neighbour of mine, told me that she was 80 years of age and was feeling troubled. She was beginning to lose her memory. She had never talked about this case to her three daughters. Her only son, who she was denied to take in her hands and hold for a few minutes, was given to a gardener to be put in a wheelbarrow to be brought to be burnt, but that gardener came forward through one of the nuns and told the story. There are cases where people come and bring stories to assist. Knowing of the reputation of the judge in question and of her work, I believe she will give us a

comprehensive report. I have no doubt that she would be conscious of how the information that came to the confidential panel came about. She would know how this confidential information came and she may replicate certain amounts of that in her report.

As Senator McDowell has said - I have looked at the documentation that was sent out inviting people and I know people who engaged - they went into a system to tell a story to assist the commission and in those cases, their confidentiality needs to be protected because they will have done a great service. At the end of the day, the State has empowered a judge to carry out an independent commission with significant powers and that will be reflected in it.

This is a difficult one for me. It is a matter of balance. The word “balance” seems to be used a great deal, particularly in the coalition Government. It is a word I have come to use. Everything is about being pragmatic and about balance. On balance, it is right to support that amendment. It took a long time for me to get my head around it. Honestly, it did not come easy. On balance, having spoken and having had shared conversations with people, I think it is the right thing to do.

I am happy to put my name to it and to support it. I hope the Minister will come some way towards understanding what I am saying on this matter.

Acting Chairman (Senator Eugene Murphy): I thank Senator Boyhan. I believe I can speak for every Member in the Chamber in saying that the last 20 minutes have been very touching. Incidentally, some Members have not indicated that they wish to speak on this. Will they indicate if they wish to do so and I will note their names? I call Senator Ruane.

Senator Lynn Ruane: I thank the Minister for attending. I oppose these amendments, especially amendment No. 7. I am speaking in response to the idea that we are honouring people’s confidentiality and honouring our word to the survivors who came forward. Senator McDowell read out the invitation. If we listen to the contribution, we hear that they were told it would be confidential and that the information would never be public. They were never asked if they wanted it to be public. People wanted to give evidence in public to the commission but were refused. They wanted it to be public. The people who wanted it to be confidential could have asked for that. They were never given the option. We are not honouring the word. We are honouring a flawed process that was brought through the Houses by Senator McDowell. What we are honouring is the legislation for the commission and how it was administered. We are not honouring our word to people. We did not ask them if they wanted to sign a waiver. We told them what way they were going to engage with the process. They were not given an option.

I will leave it at that. It is not fair to say that we are honouring people. Hundreds of people are contacting us to tell us that they wanted to give their evidence to this commission in public. They wanted the commission to be held in public, but they were never given that option. To stand here and say that we are honouring a system that people bought into voluntarily is inaccurate. It is not true of every survivor who walked into the room to contribute to that investigation.

Senator Alice-Mary Higgins: I thank Senator McDowell for clarifying that the database is not affected by this, as it is important that there is unity across the House. There are a number of other areas of agreement across the House, but I must oppose amendments Nos. 7 and 21. I will explain why.

It is about the core issue of people’s rights to have their stories told, if they wish to tell them,

and to own their words and experiences. The 2004 legislation was drafted at a particular time when Ireland was early in beginning its journey. It was before the referendum on the rights of the child, the apologies and Tuam. We were at a point where we were beginning to look at these stories. There was still an assumption of secrecy and a climate of secrecy, and it is one that unfortunately permeates many parts of the legislation in the history of the State. So be it.

Nonetheless, the 2004 legislation contained a measure which allowed for balancing. It said that commissions may conduct proceedings in private unless a witness requests that all or part of his or her evidence be heard in public, and the commission grants that request. There was that provision that people should be allowed to give their evidence in public if they wished to, unless there was a reason not to. One of the only reasons not to was where the commission might have concerns regarding impacting on the procedure and the investigation. Bear in mind that, according to the records we have now, the investigation is finished and the procedures are concluded.

That was in 2004, but let us refer to 2015 and the order establishing this commission. It reflected to some extent the fact that the argument, situation and understanding had changed. Part 4(b) of this commission's order of establishment states that it will "provide in its procedures for individuals who wish to have their identity remain confidential during the conduct of the Commission and its sub-sequent reporting". The assumption has switched from assuming everything is private and a person might request a public hearing to saying that it may be public, but there are and must be circumstances, and they have been eloquently described by Senator Boyhan, in which people could request to speak in private. That was the mandate given to the confidential committee. That committee was asked to provide in its procedures for individuals who wished their identities to remain confidential. However, the confidential committee instead issued instructions to people telling them that it would be private and secret.

We have the words of the director of the commission referring to how a number of groups had asked for public hearings, specifically because this is the confidential committee. This is the testimony on what happened and the words of those affected. She said that at least five individuals had asked to give their evidence in public and had been refused. I care about those five individuals and their rights. There are far more than five because a number of them were told from the start that it was going to be this way. It was not based on volunteering. People were not looking for assurances in many cases because they were not ashamed. They were proud of themselves. They were proud of coming forward and talking about the horrors that had been inflicted upon them. It was a massive moment for people to be brave, come forward and talk about their experiences. They wanted it to be recognised. They wanted the dignity of it being recorded. They wanted the history books, which had hidden them after decades of erasure and secrecy, to show that they had stood up and given testimony. We know from the histories of abuse and from court trials for sexual abuse and attacks how important it is to be able to say, "I recovered my power and strength, I spoke and I reclaimed my life and experience".

With great respect to Senator McDowell, it is not something about which one can casually telephone Joe Duffy or on which one might write to a newspaper. The Senator may have the access he wishes to RTÉ or *The Irish Times*, but most people do not have that. In the interim, when we were halfway through this process, people were telephoning me and begging me to read what they said into the record of the Seanad because they were so upset that what they said had vanished. It is not easy to give this testimony, or to give it multiple times. It is not something one wishes to run with to the media, but one wants the record to show it.

Absolutely, there must be massive nuance in this. I do not believe that these records should be transferred wholesale. In fairness, Senator McDowell acknowledged there are provisos in the National Archives and that if that were the case, it would be entirely inappropriate. Those who wish to be anonymous and so forth should be - and their documents should be anonymised - but there must be space left in this legislation.

With regard to the operation of section 41, I have tabled an amendment in which I ask the Minister to make regulations on how the 30 years would operate. Those regulations should include provisions that protect the anonymity of those who actively want it, and offer an opportunity for access to their testimony and, indeed, an opportunity to not be erased from history for those who wish to have their records. One of the few people who managed to get her story out to the public is Philomena Lee. Her family are tweeting again today about how important it was and how much she wanted it to be public. She challenged and begged for her record to be public.

The culture that prevailed in 2004 seems to have trumped the direction that was given to the confidential committee in the 2015 order. If it chose to not properly give people the right to the option of public hearing at that time, we certainly should not replicate that mistake. There are two specific concerns here. One is that the record would be lost and people would disappear. If there is one thing we have known, it is disappearance. If the records were not transferred, the stories of persons would vanish. That is not respectful to people, especially to those who wish to have their names in their stories. There are people who do not want to be just a salutary lesson for future generations but to be known, and they should have that right. One of my amendments at a later stage seeks to address this issue in a different way. It suggests that all of the data protection rights, including the right to erasure if that is what people need or want, as well as the right to access one's own personal information, should be applied to all of the records, including those testimony pieces of the confidential committee. I have huge respect for those proposing these amendments but I cannot support them.

Senator Gerard P. Craughwell: I came in here this afternoon with a very fixed set of views. The conflicts that are going on in my mind have been there since this Bill saw the light of day. Before I speak properly on the Bill, I want once again to condemn the way this legislation is being run through this House.

Senator Alice-Mary Higgins: Hear, hear.

Senator Gerard P. Craughwell: It is absolutely disgraceful. The Minister's name will be on the Bill and his party's name will be associated with it. What were they thinking that they would allow this to happen? Why would the Minister come in here and ram through legislation when he knows how wrong it is to do so? I have had nearly 4,000 emails to date from those on one side of the argument and a few hundred from those on the other side. I have also had some pretty harrowing phone calls, particularly from women of my own age group.

I was born and reared in Salthill in Galway and had a pretty easy life growing up. We were all fairly well-to-do. None of us was hungry but we were at the bottom end of Salthill society. My old man was a gas fitter. I remember, with horror, girls who got pregnant because until they disappeared they were the talk of the neighbourhood, of every neighbourhood. Shame was wrongly brought down on them and many, because of this legislation and events of recent years, are reliving those experiences now.

16 October 2020

One of my very good friends was living outside the country when she got pregnant. Her father was especially Victorian in his world view. She contacted home to tell them she was pregnant. She was living in the UK and her plan was to go to London and have the child there. To her absolute surprise, her father said “No”, that she was his daughter, she had done nothing wrong and that she should come home. He looked after her because he loved her and because in his view, with his Victorian mindset, she had done nothing that was abnormal or unnatural. She was one of the very lucky ones.

I told the story the other day of a woman who met her daughter and started to tell her about the circumstances of her birth. When she got to the end of the story she told her that she never wanted to see her or hear from her again and walked away. I got a phone call that night from a woman who told me about meeting her daughter for the first time. Her daughter had a notebook with her and asked a number of questions about family health, family background, hereditary diseases and so on. When the questioning was completed, the woman suggested that they might meet again but her daughter said, “No, thank you.” She said that she did not want to meet again because she had found out all that she needed to know. She said, “You dumped me 35 years ago. Goodbye.” That is the sort of thing that is dragged up.

I am mindful of two brothers who were sent to Letterfrack because their mother fell pregnant a year after their father died. The family farm was taken from her and given to a relative and she was sent to a mental hospital. Believe it or not, almost 70 years later, one of the surviving brothers met his half brother for the first time. It took 70 years for them to meet. They were only living 20 miles apart but never knew one another.

I totally concur with Senator Ruane. The State, and in this case the Minister is the embodiment of the State, promised citizens that if they came forward they would be treated with confidentiality. It assured people that what they told the commission would be kept in the strictest confidence and used only in the preparation of a report and that they need never fear anything. My colleague, Senator Boyhan, spoke about people who were in institutions, and it must be said that some of those in institutions were wonderful people who did everything they could for those in their care, although others were pretty horrible. Some came forward and told the stories they had to tell. Would they have told those stories had they not been assured of confidentiality and anonymity? I do not think so. This is important, even if only one person wanted to remain anonymous. Hundreds may want to tell their story. Indeed, hundreds do want to tell their story but this is not the forum for that. They have to be given the right to tell their stories, and if the Minister wants to do something worthwhile, he should set up a public forum where people can come forward and tell their full story. In this case, however, the State promised that what transpired in those rooms would remain confidential. As Senator Boyhan has pointed out, it did not encompass all of the institutions. Only a number of institutions were covered.

I can guarantee that there are people watching this who want me to sit down because they want to know everything while there are others who will be thanking God that someone is trying to protect their confidential information. We cannot go back on our word. We cannot guarantee confidentiality today and then turn around tomorrow and qualify it by saying that we did not mean full confidentiality. It is similar to secret telling. I have a big issue with people telling me secrets because I always have somebody that I trust emphatically with whom I will share something but of course, that person trusts someone else and that person trusts another person and then we are into Chinese whispers. We cannot go back on our word, no matter what. If this goes through and something happens in years to come, it will be on our heads in this House for allowing it to happen. If there is one person out there who participated in this

process who wants to be 100% certain of anonymity, who wants to be sure his or her name will never be known and that his or her story will only be encompassed in a report, then he or she has that right. Nobody, including the Minister, me or anybody else, has the right to change that.

Having listened to Senators Higgins and Ruane, I accept that there is a discussion to have here but we cannot have that discussion in one afternoon, ramming through all Stages of a Bill. This Bill should have gone to a committee for detailed scrutiny and discussion. We should have explored all of the options. We do not have that today. I was deeply moved by the contributions of Senators Ruane and Higgins, in particular the point made by Senator Higgins on the number of people who want to tell their story. If one person gave information to the committee, that person is entitled to full and total confidentiality. We cannot break our word. Ireland gave its word and nobody but nobody should undermine the word of the State.

I know there is a rush to get this legislation into the Dáil. I ask the Minister to accept the amendments and do the best he can for the people who put their trust in the State. I have serious issues with Senator McDowell's amendment but I fully accept the principle behind it; if one gives one's word, one keeps one's word and that is it. There is no middle ground. We cannot say we did not mean total confidentiality or we might change our minds as time goes on.

I listened to the contributions of Senators. Senator Boyhan would go through one when he talks about his experience. He is the only person present who has empirical evidence at his fingertips and personal knowledge. He said more or less what I said, namely, that we accept the right of every individual to trace their heritage and tell their story but it is too late in this legislation and should not happen. If the Minister lets this go through, it will be on his head and nobody else's.

Acting Chairman (Senator Eugene Murphy): Senator McDowell wants to make a clarification. I ask him to be brief.

Senator Michael McDowell: I point out to Senators Higgins and Ruane that before the Minister clarified that nothing would go to Tusla from the confidential committee, amendment No. 7 stated: "This section does not apply to any record or documents created for or by the Commission for the purposes of the Confidential Committee unless the person supplying the document or record of the information embodied in the record or document has consented to its being deposited in an unredacted form." I am not trying to force anybody or enforce on somebody else-----

Senator Alice-Mary Higgins: The amendment-----

Senator Michael McDowell: I ask the Senator to listen to me for a second. I am not trying to enforce any confidentiality on anybody. Senator Ruane made the suggestion that somehow this was my fault because the 2004 Act somehow provided for this. The 2004 Act did not ever contemplate a situation where people would give evidence without being cross-examined on it by anybody affected by it. It was to avoid all of that that this confidentiality committee was established.

The very words "confidential committee" was put in by these Houses before Senator Higgins and I became Senators and the word "confidential" was supposed to mean something. The legislation did not refer to a "special committee" or a "committee of people who may or may not want to be confidential." The term used was "confidential committee" and that was done in 2015 before the Senator and I were in this House. To try to suggest that I am somehow respon-

sible for terms of reference of this kind is, frankly, ridiculous.

Senator Alice-Mary Higgins: I need to respond.

Acting Chairman (Senator Eugene Murphy): The Senator will have an opportunity to respond later. Senator McDowell sought to make a clarification and, in my view, he was entitled to do so. Senator Higgins will have an opportunity to contribute later.

Senator Mary Seery Kearney: I, too, have been extraordinarily moved by all of the contributions. I am grateful to Senator Boyhan for his honesty, transparency and passion. Equally, I am always impressed by Senator Higgins's passion. I am conflicted by this legislation as is the Minister. It is not how we want this legislation to be but needs must because time is of the essence.

I oppose the amendment, not because I do not fully agree with confidentiality, as Senator McDowell so eloquently described it, but because I do not believe it is necessary. Mindful of the context, it feels obscene to argue technicalities of law. In saying that, I am referring to what I am about to do, not what Senator McDowell did. I have also received telephone calls and I have wept on the phone as people told me their stories. My family and people with whom I associate are not untouched by this. I need to qualify my argument by making that point.

The 2004 Act was introduced for any type of commission of inquiry. It set in place a series of principles that would allow us to arrive at a conclusion or report that would then be dealt with by a Minister within the confines of the rules set out in the Act. The 2004 Act is strong and good legislation. From 2015 to this day, we have heard reports and stories and the horror of this comes out more and more. Just when we think it could not get any worse, it does. Our culture changed. What I see in the 2015 statutory instrument is a provision for nuance to allow us to arrive at a full and complete story. We know the experiences of the courts when it comes to sexual assault and rape, and the horror of that. Setting up a confidential committee created a system that was outside the normal evidence. The technical definition of evidence is of arriving at a fact on the basis of being tested and cross-examined in an adversarial situation, albeit that adversarial is not always appropriate. The confidential committee provided a place where the stories could be told without fear of being cross-examined, undermined and challenged in the manner in which it is necessary to arrive at what would constitute evidence and what a court would consider evidence. The obligation of the confidential committee, as provided for in the statutory instrument, was that it shall "operate under the direction of and be accountable to the Commission", "provide in its procedures for individuals who wish to have their identity remain confidential" and "produce a report of a general nature on the experiences of the single women and children".

The object of the confidential committee was to fill out the story. All of us would be careful if we were to be cross-examined. Even here, I am nervous about every single word I say because the power and privilege of this House give us the opportunity to either heal or wound the people who are watching this debate. I find that I am nervous for that reason. The confidential committee stripped that away and allowed people to tell their story. Its members could come away afterwards with a full version of events that maybe would not come out if people were to be cross-examined. For this reason, I do not believe it constitutes evidence, nor do I believe it constitutes the records. In my humble opinion, therefore, I consider section 5 adequate to exclude anything that flows from the confidential committee in this context. We do not need to go there because all that is coming out of the confidential committee is the generalised report.

I do not believe the amendment is necessary.

Senator Rónán Mullen: I support the amendments tabled by Senators McDowell and Boyhan. The first amendment is definitional, setting up the reference to the confidential committee. The first of the two substantive amendments proposed refers to the material that will be passed on to Tusla and I note the importance of Senator McDowell's questions to the Minister at the outset. As I understand it, he was seeking to guarantee that we are not talking about any information that would have been presented to the confidential committee. As I understand the purpose of amendment No. 7, it is to ensure that were any information from the confidential committee to go to Tusla, there would be redaction unless the person supplying the document consented otherwise. The substantive and more significant amendment is amendment No. 21. It relates to the information that will be deposited with the Minister, which I understand will include testimonies given to the confidential committee and much information that could identify people.

On Second Stage, the Minister commented on section 5, which is the subject of Senator McDowell's amendment, that section 5 provides that for the avoidance of doubt the obligation to deposit records with the Minister in accordance with subsection 43(2) of the 2004 Act is an obligation to deposit such evidence and documents without redaction therefrom. The Minister went on to say this section is declaratory of the current position under section 43(2) and has been included in the Bill purely for the avoidance of doubt. I am correct, am I not, in saying this section 43(2) of the 2004 Act is effectively silent on the issue of redaction? I ask the Minister to please correct me if I am wrong. It simply refers to the deposition with the specified Minister of all evidence received by, and all documents created by, the commission. If I am incorrect in this and if there is a reference to it not being redacted I would be very grateful for clarification on this point.

We do need to consider very carefully what went on in the context of the work of the confidential committee. Senator McDowell went to great lengths to explain what explanations and undertakings were given to people that would have caused some people to go forward. I take very seriously the point made by Senators Ruane and Higgins that there were people who went to the confidential committee who had no interest in their testimony being confidential. That point has to be taken very seriously. If I understand it correctly, there were people who would have preferred it not to be confidential, as Senators Higgins and Ruane have said, but I do not think it is doubted there were people who were happy to go forward to the committee on the basis that what they were saying would be confidential. Therefore, it seems all the more necessary that the wishes of such persons be established before any information is transferred to the Minister without redaction. This points to the need not to rush the Bill but for the Minister to go away and consider the issues of justice, fairness and honour that these amendments touch on and give us and himself the chance to see how it might be addressed by way of an amendment on Report Stage.

It has already been pointed out several times that there is no obstacle to the Minister extending by a short period the deadline by which the commission must submit its report and thereafter dissolve so as to allow to be teased out not just this issue but the impact of any change consequent on this debate, these points that have been raised and any possible acceptance by the Minister that is a serious point to these amendments being affected in activity. The commission must be allowed to establish the wishes of people who came forward on the question of redaction. We cannot just assume it is okay to pass on all of this information, including identifying information, without redaction.

It is very difficult, at least I find it very difficult, to imagine in the abstract, as it were, and without examples, all of the different kinds of information that are in play here, whether it is the databases and related records being passed on to Tusla about who was in these mother and baby homes, or the kind of information that would have been the subject of disclosures given to the confidential committee. As I listen to the debate I have been asking myself what kind of person would be affected by the decision to redact or the decision not to redact. In going to the confidential committee there were two aspects to this. There was the promise of confidentiality or, as Senators Ruane and Higgins might put it, the imposition of confidentiality but, of course, there is also the unchallenged nature of what would be said, by definition unchallenged so as to allow people to tell their story. As Senator Seery Kearney pointed out, this is not evidence in that sense, if I am quoting her correctly.

We can say the decision to redact or not could do an injustice to the person speaking but, of course, it could also do an injustice to the person spoken about. We can imagine an allegation or claim being made about the parentage of a child, or whatever it is, that is not being tested by the confidential committee but which is a claim that could be very damaging to the reputation of a person being mentioned. That person may be alive or dead. Putting such information, even subjecting it to a time period during which it cannot be accessed, creates potential risks of unfairness or injustice. It might be the case that people might wish that their evidence is not redacted in the sense that their names are not separated from it but it might still be the case that justice to another person requires that certain names in that testimony be redacted. It might be the case that people who came forward to the confidential committee might not want their names linked with a story because they might not want any further linkage between them and their story. The State has to be honourable in this and we have to err on the side of caution. If there was an understanding that confidential information was being given, the State has to proceed with tremendous caution.

I am sorry that I have not had the chance to look back in some detail on the Ryan commission but perhaps the Minister will know the answer to this question and I would be grateful for a direct answer from him. The Ryan commission was established to inquire into child abuse from 1936 and it also had a confidential committee, in addition to a more evidence-based committee. What commitments or representations were made to those who gave testimony to the confidential strand of that committee? What decisions were made about redaction in that context when presumably the information was eventually transferred to the Department? I do not know if that is a relevant question but I would be grateful for clarification. It would perhaps be some indicator as to what precedent might exist in this situation, not that the cases are exactly the same because in the context of this confidential committee we are talking about information that touches on the Minister's aspiration to provide for a system of information and tracing into the future that would allow people to know more about their identities and stories. That is an aspiration we must all support. I would be grateful to know whether the activities of the confidential strand of the Ryan commission can shed any light on this question we are discussing today.

Could it be said, supposing Senator McDowell's amendment is accepted, that information could be lost that might be of benefit to a person trying to establish information in the future as to his or her identity and so on? While I agree with what Senator McDowell has said in pointing out that there are other means open to people to put their information into the public domain, it does strike me as at least possible that people might have approached the confidential committee with information. These people might have done so because people evolve in their minds and thinking about their situations, and it might be the case that they gave information, perhaps

intending that it remain confidential and perhaps not engaging with that question because they knew the only form in which they could give the information was in a confidential context, as per the points made by Senators Higgins and Ruane. It might be that such people, having told their stories, would want their names to be linked with that story. That can be separate from any questions about what they have to say and how it might adversely impact on third parties mentioned in their stories. There is also the question of their identities being disclosed by them being linkable in the future with certain information that might help the information and tracing process.

That prompts me to wonder whether a tweaking of Senator McDowell's amendment could be done so as to provide that before the commission's dissolution, it would provide the intent of each person who came before it as to whether their names shall be redacted or not. That is not to touch on the other possibly complicating aspect of this, which is that what they say might impact unfairly on others and the question of whether those other persons' names should be redacted would remain to be considered.

That is all I have to say but it all points to the need for the Minister to not rush to Report Stage of this legislation. The Minister would be setting a good standard if he treated the amendments of Senators McDowell and Boyhan, particularly the last one, in light of the guarantees he gave on the second one. It would do a credit to him and to his seriousness about these sensitive issues if he were to take the time to consider the important points that their amendments have brought to the surface and if we were to not take Report Stage today so as to give the Minister a chance to consider those amendments and this debate fully before we go any further.

Senator Alice-Mary Higgins: On amendment No. 7, I appreciate the points that were made by Senator McDowell and I had hoped that I could support this. It addresses those supplying a document or a record of information. However, my concern is on those who may have given testimony and statements and I was worried about a blurring of the line around such a document as might be a record of a testimony and so forth. I appreciate that should not be the case as these seem to be documents going into the confidential committee. My concern is that if the amendment were successful, the presumption might be made - and this presumption seemed to be made previously by the commission - that all have chosen privacy.

I was not objecting to the 2015 order. My concern is the 2015 order was not fully and properly conducted in regard to the confidential committee where it required to provide in their procedures for individuals who wished to have their identities remain confidential during the conduct of the commission and its subsequent reporting. That was a narrow power in terms of privacy. It did not extend to documentation. Nuance is needed and, where possible, documents should be subject to regulation so that they are used appropriately. The right to privacy explicitly related to testimony and it was a right for those who wished to have their identities remain confidential during the conduct of the commission and its subsequent reporting. There was an ambiguity there.

We have heard sincere concerns expressed on either side. I am happy if it is the Minister who has regulation but it is clear that for any of these explicitly sensitive records of the confidential committee, there must be regulations that uphold the rights of those who need anonymity and privacy and of those who wish to have the right to have their stories told and have their names included. That must be balanced with the rights of the public interest. All of those rights are contained in the data protection regulation. Before processing of such records would take place, there would need to be clear regulations that set out and balance all of those competing

rights we have heard of. That is why I have an amendment seeking that the Minister would set those regulations. I understand others have called for the commission to address that balancing of concerns before it transfers the records to the Minister.

4 o'clock

I think because it is a very large task, it would be very difficult for the commission to do. It may be that the records need to transfer, but it needs to be very explicit that no processing would take place until the Minister would put appropriate regulation in place. Either way, there is clearly a task of balancing to be done in this regard.

Senator Michael McDowell: First, like Senator Mullen, I agree that my set of amendments were concentrating on the rights of those who wanted to maintain their confidentiality because that is what I was concerned with. Senators Ruane and Higgins have pointed to the opposite cohort who did not want confidentiality and wanted total publicity and public hearings. I hope Senator Ruane will not accuse me of mansplaining.

Senator Lynn Ruane: Senator McDowell has obviously admitted it already so he should go ahead.

Senator Michael McDowell: If one goes back to 2004 and looks at the situation that the then Government found itself in, it wanted to do justice to the victims of clerical sexual abuse. It wanted to establish an inquiry into the Dublin archdiocese, which was conducted by Judge Murphy as well. She has been a huge pillar of the State in these matters. The only tools available to us at the time were the tribunal of inquiry legislation going back to 1919, and that had been interpreted by the Supreme Court as saying that anybody who came on the wrong end of evidence in a tribunal had a constitutional right - this goes back to the Committee of Public Accounts and the arms crisis in the 1970s - *in re Haughey* - to be represented, to challenge the evidence and to vindicate his or her name publicly by testing or disproving the evidence if he or she could do so.

We must remember that the 2004 legislation was to address a situation where there had to be an inquiry into the sexual abuse of children by clergy. It could not be a general tribunal of inquiry because it would have been absolutely awful to put people who testified through the business of having ranks of lawyers accusing them of perjury and all the rest of it, so there had to be a different kind of mechanism whereby that whole issue could be dealt with. Without getting overly historical about it, what was done then – there are similarities to the 2015 terms of reference – was to ask Judge Murphy at that time to look at a sample of the complaints because, horribly, there were so many that if she tried to investigate them all she would have been there for 20 years. She took samples, she anonymised, she cross-examined people and she subpoenaed people. She looked for records from the Dublin Archdiocese relating to particular sample cases. She anonymised in her report. Some of us may recall that she gave code names to the perpetrators, the victims and the places where things happened to stay on the right side of the *re Haughey* decision so that people could not complain that they had not had an adequate opportunity to rebut, challenge and test the credibility of all the victims, which would happen if there was a tribunal of inquiry.

I was not here in 2015, and like most of us here I was not party to consideration of the terms of reference, although Senator Mullen was, but I doubt he foresaw this particular difficulty arising now. As I see it, the situation we face now is that the terms of reference were designed to

take a small number of the institutions, but not all of them, and not to have a tribunal with an adversarial approach involving “He did this to me” and “She did that to me”, but to establish an overall picture of what happened. If one looks at the terms of reference, it is general. It was not the case of considering whether Michael McDowell was sexually abused while he was in Letterfrack. That kind of issue cannot be determined by this process.

Going back to Senator Ruane’s point, if people did want to testify in public, the corollary of the *re* Haughey decision and all of the jurisprudence from the Supreme Court was that one had to have, effectively, a tribunal of inquiry with adversarial legal challenging and testing of evidence. The price that was paid for avoiding that was to set up a confidential process.

Senator Seery Kearney makes the point that these accounts given are untested and unchallenged. It is interesting that the leaflet that the commission issued states on the bottom of page 1, “The evidence you will give will not be open to challenge.” One could ask if that is evidence. Senator Seery Kearney is a barrister. Would a lawyer consider it evidence if one person throws out something and it is there and nobody can say that it is untrue and “I never did that” or whatever else? I take her point, but I do not think the Minister is going to take the view that it is not evidence. It is kind of her to throw up that ball for him to hit with his racket, but I do not think he is going to take that view. I think he is going to take the view that what happened before the committee is evidence for the purposes of the Act.

If that were the case, is there an obligation so to deposit such evidence and documents without redaction? If the Minister were to stand up and say he does not think anything that happened before the confidential commission is evidence and therefore it does not apply, that is fine. I would love to hear that, but I do not think he is going to give that assurance to Senator Seery Kearney or any other Member of the House. The reference is to “documents and records” created by or for the commission, other than the “database and related records” which are going to go to Tusla. I do not think the Minister is going to grasp the lifebelt Senator Seery Kearney has thrown so generously in his direction and say that there is no issue here. I think, helpful and constructive as she is trying to be, he is not going to take that. He is talking about something else.

As our amendment to section 2 shows, Senator Boyhan and I have from the very beginning thought that the principle that applies here is the wish of the person who testified to the commission. That is the crucial issue. If the people Senators Ruane and Higgins refer to wanted public hearings, there would have had to have been a mini tribunal of inquiry. One could not simply say Brother so-and-so or Mother so-and-so did X, Y and Z to me in public without giving them the opportunity to say that is wholly untrue and suggest that the evidence is false. One just could not do that in public. One cannot establish a one-way street for victims, even if one tends to believe that the victim is much more likely to be right than the person accused, which is dubious in some circumstances. Even if one slanted it towards the victim, one must give protections to people who are on the receiving end of such public utterances. One cannot establish a forum where people can make accusations against other people immune from consequence. The Supreme Court would slap that down immediately, if it was attempted. We have absolute privilege in this House, but we are subject to our own constraints. We cannot just make wild accusations against people and if do, we are subject to sanctions imposed by the House. We could not possibly have a situation where people could just testify in public without being challenged.

I come now to a point which the Minister might be getting tired of hearing. I put this question to the Minister, and the answer he gave, which came as a surprise to me and, I am sure,

many other Members, was that Tusla would not get anything to do with the confidential committee. That is the kind of question which should be asked on Committee Stage and the answer should be given then. On Report Stage, it would then be possible to tweak an amendment to state that if we are not referring to that, we are referring to another category of material and Report Stage would then reflect what happens on Committee Stage.

Likewise, to take account of what Senators Ruane and Higgins said, if the amendments Senator Boyhan and I tabled are unduly concerned with the confidentiality of the people who want confidentiality to surround them and insufficiently addressed to the people who would like their record to be in whatever ministerial or State archive, or available for whatever process at whatever particular time, and if I fail to consider sufficiently those points by making it very clear in an amendment that I tender that it is subject to the wishes of the people involved and that those wishes should be ascertained, one way or the other, that also shows why Committee and Report Stages should not be on the same day. Rather than a division, I see a significant consensus emerging that if people do not want their record mutilated, it should not be mutilated and if people want their name kept secret, the commission should have the right to do that.

Returning to amendment No. 21, our proposed section 5(2) states:

Where a document has been created solely for the purposes mentioned in *subsection (1)* [the confidential committee] which in the opinion of the Commission was created on the express representation to any individual as set out in subparagraph (b) of paragraph 4 [of the order of 2015], the obligation under subsection (2), section 43 of the Act of 2004 shall be subject to any direction made by the Commission to redact the document so as to give full effect to the said representation.

What we were trying to do with the amendment was to say that the commission should have a discretion to make a redaction if it believed that it was necessary to give full effect to the guarantee of full anonymity given to the person whose record it is. I suppose it could have been made clearer by mentioning the consent of the person involved and the power of the commission, before doing any redaction, to inquire of the individual if he or she wanted to exercise that right.

However, that brings us back to the point that the Minister is ramming this Bill through the Houses without giving fair consideration to those points. The Members of this House were given very valuable information by the Minister at the beginning of this debate on these amendments, namely, that none of the confidential committee material will be going to Tusla. That was not clear, however, and was never made clear to any of us until now. The whole purpose of a legislative process with different Stages is that information comes out, such as that which the Minister has just furnished, arguments such as those put forward by Senators Ruane and Higgins are made which cast a different light on some of the people affected by this legislation, or the amendment, one way or the other. When that happens, there should be a pause, where Senators can agree with a point, such as that made by Senators Ruane and Higgins, and that should be allowed for. Instead, however, the Minister has set in train a process that completely prevents this House from really arriving at a consensus on this issue. The process that has been set out is automatic, like an ATM machine, where something is typed in and then something comes out, and we are supposed to produce the result the Minister wishes, without amendment, because he has considered everything. There is the infallibility of the moving Minister. I was a Minister and I suffered from that disease, of that we can be absolutely sure. It has always been wrong for a Minister to come into a House and will not listen to the amendments, will not

budge on any of them and will say that each and every one of them is unnecessary or whatever.

My other point is that Senator Mullen has asked the Minister a straight question and we are entitled to an answer. If there is urgency here, it is that on 30 October 2020, this commission of investigation will wind up unless its terms of reference are tweaked to give another three or four weeks to enable this House d Dáil Éireann to do a proper job on this legislation, and also to give the commission a timeframe in which to seek out the views of the witnesses who went to the confidential committee as to whether they want a redaction. Much of the injustice implicit in this legislation could be avoided if that were done and the legislation could reflect a fair balance if that were done.

As Senator Higgins said, it is outrageous that Members of Dáil Éireann are being asked to furnish amendments to this legislation before the Seanad has even finished with it. The only presumption must be that no amendment is intended to the Bill in this House. Deputies will be asked to put in amendments to what the Seanad will rubber-stamp on Friday because there will be no amendment in the Seanad. We can safely table amendments to the text the Minister is bringing in because no matter what is said in this House, it will this Bill or no Bill that will come before the Dáil next week. That is wholly wrong. It flies in the face of the clear commitment given to this House by the Leader in September, on the date we considered the Forestry (Miscellaneous Provisions) Bill 2020, that this would not happen and that we would not be in a position where we could not operate the various Stages of legislation in a sensible way, one which enables us to take account of the information we are receiving and the arguments we hear from our colleagues.

Some people wanted to abolish this House. I will not point any fingers but some people wanted to do that. If we say to Deputies they should prepare their amendments because nothing that crowd in the Seanad says, does or votes on will change our minds and they should do so on the assumption that the legislation that comes out of Seanad Éireann will be that which went into the Seanad, that anything said in the Seanad will be ignored and that Senators will agree to telescope all Stages because the Government's majority will be used to bring that about, it will make this debate almost meaningless in some respects. I ask the Minister to tell the House upfront what is to stop him extending. Presumably, the commission would agree to it and request it. What is to stop him extending the commission's life by 21 or 28 days so it can finish all its administrative tasks, as I believe it is under huge pressure to do so because its staff have been affected by the coronavirus clampdown? What is to stop him from doing this? Does he think Judge Murphy would object to having extra time? My understanding is the final report is ready and it could do a confidential commission sub-report almost at will. There is not an urgency here. We deserve an answer rather than just being fobbed off with a statement that 30 October is written in stone; it is not. The commission's life has been extended on a number of occasions. There is nothing special about 30 October.

The only thing I can see that is of urgency on this matter is the ridiculous judicial council issue that was thrown in to the rear boot of the legislation for safe passage through the rubber-stamp Seanad. I come here to make serious points. I come here to listen to serious points. Serious points have been made. Serious amendments could be tabled but the Minister has, by insisting there be no Report Stage in effect, seriously damaged the capacity of the House to listen to its own Members and attempt to achieve justice for everybody in this matter, with the State honourably abiding by the solemn undertakings it gave to people whom it invited to participate in good faith in the commission's process.

Senator Mary Seery Kearney: For clarification purposes, perhaps my emphasis was misplaced. The statutory instrument particularly states the confidential committee shall produce a report of a general nature. All that should happen, and all that should result at the end of the confidential committee's work should be the general report and not a lot of documents or anything that would constitute evidence. My point is it will not get to the Minister to decide what is evidence as it should not exist in the first place if the commission is adhering to the terms of the statutory instrument. The amendment is, therefore, necessary because there should not be anything.

Senator Michael McDowell: What about the records then?

Senator Mary Seery Kearney: Similarly records should not have been arising in that instance. If we are adhering to what is here, there should only be a general report.

Senator Michael McDowell: The Senator is inviting Judge Murphy to turn on the shredder.

Senator Mary Seery Kearney: I have full confidence in Judge Murphy, having read all she has produced on previous commissions. I have full confidence in her integrity in ensuring the statutory instrument is completely adhered to. This is my main point.

I observed at first hand the Gacaca courts in Rwanda, which was the manner of dealing with the necessity of putting on record the history and truth of people's experience following the genocide. A process is necessary here, as is doing something such as this at the end of it, following the publication of the report. Another 28 days is 28 days too long for the people outside the gates who are looking for the outcome of the report.

Senator Michael McDowell: The Minister-----

Senator Mary Seery Kearney: This is about the database. The net point is the database. It is not about the bigger issue; it is about the database. There is a means of resolving it. I was not here in 2015. I had no say as we were not in this, as Senator McDowell eloquently said, but we should not.

Senator Michael McDowell: Senator Seery Kearney said the people outside the gates are supporters of the Minister. They are not.

Senator Mary Seery Kearney: I am not saying they are supporters of the Minister. I have not stated that. To delay the report is to also delay justice.

Senator Lynn Boylan: Has Senator Seery Kearney spoken to the survivors?

Senator Mary Seery Kearney: Yes, I have spoken to survivors.

Senator Lynn Boylan: On a point of order, we have spoken to them and they are happy-----

An Cathaoirleach: I want to outline the rule.

Senator Lynn Boylan: -----with a delay of 28 days if it deals with the substantial issues.

An Cathaoirleach: The rule is simple. If Senators want to intervene during someone's contribution, they have to ask permission. The Senator in possession then has to agree.

Senator Mary Seery Kearney: I am happy to agree

Senator Lynn Boylan: We have consulted the organisations, specifically because we initially thought like Senator Seery Kearney that an extension to the deadline would give to the survivors with one hand and take back with the other. We consulted them and they told us to do what we have to do to stop the Bill and they will live with a 28-day delay if it means they can deal with the substantial issues. We have spent the past two hours listening to people speak about the intricacies of this file. The survivors are telling us to do what we have to do but not to let the Bill pass. I plead with the Minister to listen to the survivors.

Senator Mary Seery Kearney: The Bill is about the database. It is not about the bigger issue. It is a net point of the database.

Senator Gerard P. Craughwell: When the Government was formed a number of people said to me they thanked God the Greens were there because they would make sure things are done right. This is not doing things right at all. This is rushing through legislation. Everybody in the room received 4,000 emails and not just me. The 4,000 people who have contacted us, and the several hundred others on the other side who have contacted us, would find no objection in waiting a further 28 days to finally iron out how the legislation works.

Senator McDowell was front and centre along with my good friend, Feargal Quinn, on the preservation of the Upper House to put a halt to the Government's gallop. That is what we are here for. We are here to oversee legislation and put a halt to the Government's gallop. Since this Seanad was formed, the Government has rammed through Bill after Bill. It has treated us with nothing but disrespect. It is also treating the Lower House with nothing but disrespect by demanding that Members submit amendments before we have even finished with the document.

Senators Higgins and Ruane and made some valid points. While I am totally committed to Senators Boyhan and McDowell, I believe if we had a Report Stage in a few days, we would have a chance to find middle ground between us and come up with an amendment that would suit the needs of both sides of the argument. What the Minister is doing today is an affront to democracy. It is certainly not what I expected. Senator Boyhan has told me several times that the Minister is a decent guy. He cannot allow this to go ahead today. He is charged with the responsibility of a Minister and sometimes he will have to step up to the plate and say he will not be used by anybody and that he will be his own man because that is what he is. He has to say today that he will not allow the Bill to go through the House and that he will stop it on Committee Stage because there are decent arguments being made on all sides and we need time to reflect. This is his call.

I am getting emails from people as I sit here pleading with me to slow this down. The Minister has to step up to the plate today and explain why we have to ram this through in a totally and utterly disrespectful way to the House. I did not seek election to the Seanad to rubber stamp everything that came through. I am genuinely committed to the role I have, as are most of my colleagues. I do not know anybody here who wants to see democracy being debased. That is what is going on here. I am asking now that the Minister steps up to the plate for himself, the Department he represents and those who have been affected on both sides of this argument, as well as the Minister's political party. He should say, "No, I am not going to be used here today. I will slow this down and allow proper scrutiny of this legislation and I will listen to what is being said." As I listen to people, my opinions are shifting in different directions. If mine are moving in different directions, so too must the Minister's opinions.

16 October 2020

I know people like Senators Higgins and Ruane have their finger on the pulse with the organisations behind the amendments they are moving. I know Senator McDowell's desire to protect the confidentiality is just and decent, and it reflects what any State should do. We need to slow down the process today and we should not go beyond Committee Stage. I ask that this request be honoured.

Senator Ivana Bacik: I have not yet spoken to this group of amendments but like Senator Craughwell I have listened to the lengthy debate we have had. I have certainly found some powerful arguments on both sides. In response to some of the Government Senators, I say that this is not just a technical Bill about a database. The debate has really illustrated how much more important this debate is and how much more important is the substance of the Bill for the many people affected by it.

This database refers to records and personal information pertaining to the identities and early lives of individuals and people who are deceased but whose families are desperate to know more about them and their identities. I have already read the record from the Department's document, which it supplied this morning, and it indicates there are over 60,000 such records. This is a major array of personal information about individual identities and lives. It is very important to say that.

The nature of the amendments, the dialogue we have had and the Minister's response to Senator McDowell about the confidential committee and its relationship to the database illustrate the need to give more time to this Bill. I appeal to the Minister, as others, including Senator Craughwell, have done, to give this more time and not to rush to Report Stage today. The deadline of the end of October can be extended and there have been extensions already at the behest of the commission to enable it to carry out its work adequately. There is a very strong case to be made for a short extension, which means the need for the urgency to pass the Bill would be removed.

Senator McDowell speaks about the need to respect confidentiality commitments. As Senators Ruane and Higgins have said, those who gave evidence before the confidential committee did not have an option not to give the information in confidence. Drawing on my experience, having represented survivors of institutional abuse before the redress board, I know those people were under gagging orders and they could not speak publicly about what had happened with the redress board and so on. That was an incredibly diminishing and frustrating experience for them.

What we have heard from the many people who have been in touch with us, including by email and in conversation, is that many individuals have harrowing stories and they are crying out for those stories to be heard. They want those experiences to be disclosed. Regretfully, I will oppose the amendments moved by Senator McDowell.

As I have said, these matters are complex, as we can see by the fact we have spent so long debating them. On the Opposition benches many of us are conflicted. I listened to Senator Boyhan's incredibly powerful testimony and I pay tribute, as others have done, to the Senator for disclosing his personal experience so eloquently and powerfully. If nothing else demonstrates the need for a pause in this rushed and hasty process, the debate on this group of amendments does that.

Senator Aisling Dolan: It is my first time speaking today but I spoke on Wednesday's Sec-

ond Stage debate as well. The testimony and experience of the people who have spoken today is very powerful and there is a wealth of experience among all of us. Senator Bacik mentioned she has represented people before the institutional abuse redress board and Senator Boyhan spoke very passionately earlier. However, this is about justice for the survivors and families of the survivors.

The question was asked if we had spoken with survivors and it was mentioned earlier today that there was a meeting of Galway County Council about this issue. It is true we had the opportunity, which I spoke about on Wednesday as well, to hear from four survivors and members of families of survivors. They spoke to the whole council that day in a very shocking and emotional way. I have spoken since with the representative of that organisation, who has spoken about the support she has received above and beyond from that local authority and that the site has been kept in such a pristine condition. There must be engagement at all levels in trying to support these alliances of people who are discovering and want justice.

We are speaking about amendments but delaying the Bill will delay the report and leave no legislation in place to transfer the information uncovered by the commission to any other organisation. In other words, it will be gone. All the valuable work completed over the past number of months will be gone. The original records still exist and all that is in the database are the original records within each of the agencies.

The Minister mentioned extra funds have been allocated to Tusla. Will there be funds for some of the groups that are looking to access the information? I know the Minister will bring forward legislation relating to birth and tracing information but will there be funds for groups trying to access this information through many different agencies? Many of these alliance groups comprise volunteers and the challenge for them is that although the records exist, it takes time to access them from all the different sources, including local authorities and State agencies. There is a step we can take as a Government to support these groups in some way. That is as well as waiting for the legislation that will come to pass to allow them to access the information in a better way. That currently does not exist.

The database will be protected and preserved. It will be available through Tusla and it will not have an impact on future attempts to access the information once we introduce legislation. That is what these Houses are for and it is what we can do. We can bring forward the legislation to allow access by these people, including survivors and family members.

I ask that this Bill be supported and passed so the report can issue and survivors and families of survivors can have access to the report as soon as possible.

Senator Victor Boyhan: I cannot support this legislation but we can deal with that at the end. I have spoken to many people, particularly with respect to the events in Galway. I will not go into too much detail now other than to say I stand over everything I have said. I have given this serious consideration.

We should be clear as I am hearing mixed messages from people. I know what the people told me and what the women at the gates of Leinster House told me today. I know what the people from Galway want that I spoke to today. I am very clear about what they are asking. They are asking us not to support this legislation. I want to be clear, looking into the cameras today, and I know people are in their homes watching this. They asked something of us and of me. I can speak for myself. I will stand squarely with them. I will honour their request and I

will support those people. I stand over that. It is important that I say this.

Will the Minister confirm he received legal advice on the confidential committee, as I presume he did? I do not expect the Minister to share the Attorney General's advice with me and I understand clearly the process. He advises the Government. I will make one prediction, however; there will be endless litigation against the State in respect of these matters. It is important that we know what we are talking about and that we are prepared. We cannot say we were not told. That is really important. To recap, people were given commitments and guarantees by arms of this State. The Minister is aware of this, as am I and most Members present. I presume the Minister has taken and heeded advice. Will he confirm that he has received advice on this point and that he is satisfied that everything is in order? I ask him to satisfy us as much as possible, although I appreciate the legalities involved. I am 100% clear about what people have asked me. In light of everything, I am comfortable and happy. As I said earlier, there is a balance to be struck and we have to show pragmatism. In light of all of that, I am happy to stand over this amendment to the Bill.

Senator Lynn Ruane: I will pick up on a point Senator Dolan made. She said that this legislation is required for the data to be transferred. Our GDPR legislation allows for the transfer of data in the public interest. I would, therefore, like the Minister to explain why this would not already be allowed under the GDPR legislation. I am open to correction as I am only trying to find it now, but I believe section 43(3)(a) of the legislation establishing the commission says that all documents created can be transferred. This legislation is, therefore, not required for the transfer of this data, which would not just disappear under the original legislation. This legislation is different from the earlier legislation on the commission in that it splits the data so that some will go to Tusla and some will not. This splitting of the data is the difference. All documents that have been created can already be transferred under other legislation.

Senator Gerard P. Craughwell: I do not know where the impression that everything will be lost if we delay this legislation has come from. Nothing will be lost. All we are asking for is a little more time, an extra 28 days, to get the legislation right first time. Nobody is talking about dumping the work that has been done and forgetting that it ever happened. We are saying that we want to get it right.

The 4,000 people who have emailed me to ask me to slow it down cannot be wrong. I assume that approximately half of these people were involved in giving first-hand information while the others are their relations. I have had arguments on both sides. As my colleague, Senator Bacik, said, this is very emotive matter. On one side, I see everything that Senators Ruane and Higgins have spoken about but, on the other, I see the confidentiality issues. I cannot make up my mind over a couple of hours of arguments here before walking out the door with the legislation passed. Apart from the matter of the lack of democracy and the lack of respect this shows for this House, I respect every single one of the 4,000 people who emailed me. I wish I could call their names out because they are real citizens. I do not believe any of us have every been lobbied so heavily on any issue as we have been on this.

To rush the Bill through the House in one day is absolutely insane and totally wrong. I again ask the Minister to commit to not going beyond Committee Stage today and to give us an opportunity to work through and decide among ourselves what the best amendment would be. Let us take the positions of Senators McDowell, Ruane and Higgins and find a middle ground that would meet the needs not of Members because it does not personally affect most of us, but the needs of those who have asked us to represent their views. Let us not slap them in the face and

tell them that the Seanad does not matter any way and, by the way, no amendments will be accepted in the Dáil either because Deputies have already been told to submit their amendments. Let us not tell them that the Government has the numbers and could not care less. The Minister cannot let himself be used to send this message. Deputy O’Gorman is the Minister and the buck stops with him. When all of this is over he, and nobody else, will be the only one remembered. I ask him to stop it now before it goes too far.

An Cathaoirleach: Just to let Members know, under Standing Order 39, Members may intervene when someone is talking but it must be done while that person is talking.

Deputy Roderic O’Gorman: I thank all Senators for their contributions. It is justifiable to recognise Senator Boyhan’s contributions as he is someone who has experienced some of the matters about which we are talking today and brings that sense of personal experience to this debate. To reassure him, I have sought the advice of the Attorney General at all stages of this process. I would not do otherwise.

After our debate on Wednesday, I spent a lot of time reflecting on Senator McDowell’s contribution and, particularly, on Senator Boyhan’s contribution as it came from someone who wants to see this information come out and who also has dealt with and assisted survivors who were incredibly vulnerable and who, subsequent to their experiences in the institutions, had experiences with arms of the State that left them numb, cold and very traumatised. Yesterday I saw the documents issued by the confidential committee which explain its role. These documents certainly convey a strong sense of the importance of the confidentiality of the stories of those who attended the confidential committee. “Stories” was the term used rather than “testimonies” as they were their individual personal stories,

In our debate on Wednesday I was also very struck by a particular concept. Senator Ruane put it best when she said these people were told but never asked. The idea of agency is really important in this matter. When women were put into mother and baby homes and when their children were subsequently taken out, their agency was completely denied. Agency continues to be denied in significant parts of the process of the commission of investigation. We can blame the 2004 Act or the 2015 resolution, but it is fair to recognise that it is definitely the case. The issue is the agency of those who gave their personal stories before the confidential committee as regards what they wanted to happen to their personal stories. Do they want them inscribed in the archives under their names forever and available in 30 years? Were they people who, despite the huge act of courage it took to give their stories, never wanted to hear anything about them again? There are different views on that.

Since our previous debate, that balance has been to the forefront of my mind and yesterday I engaged with the Attorney General with a view to bringing forward amendments in the Dáil that would allow for the commission to ascertain the views of those who attended the confidential committee as to whether they wish to remain anonymous. This amendment could achieve the goals we all seek to achieve. Such an amendment would be based on that concept of agency and the concept that survivors should get to make the decision. For me, that is particularly important. I want Senator Boyhan to know that he has been heard as regards the issues he has raised with me.

Regarding the need to legislate quickly, the commission has informed me that it is ready to submit its final report on 30 October as per its last extension. As every Senator knows, the commission has sought a number of extensions and is now years beyond its original timeframe.

We need to see that report delivered. Senators will be aware that the report will then have to go through a process of examination by the Attorney General. I believe I will also be able to refer it to the Garda, a matter on which questions have been asked a number of times. Following a decision of the Cabinet, the report will be released.

An extension is based on a request from the commission, which has always been made through interim reports. We have received no interim report seeking an extension this time. We have been told that the report will be ready on 30 October. If any interim report was received, it would still have to be considered by the Government. A test is set out in the legislation as regards the factors on which an extension would be granted by the Government.

If the commission reports on 30 October and this Bill is not passed, the database will be sealed in the archive. That would be a tragedy. The database would be a beneficial tool in terms of what Tusla does currently and, in particular, the information and tracing legislation, which the House agrees needs to be implemented.

One or two specific questions were asked. Senator Dolan asked about access to funding for groups. I am willing to consider that matter. When we get the commission's report, it will be detailed and will make extensive recommendations. Once we are able to publish it, we will probably act in that context. Much of what has been referenced in our debates and some of the amendments relates to the wider measures to be taken to address the legacy issues, for example, the creation of a distinct national archive. Many Senators have pointed to the site on Seán MacDermott Street. I met Dr. Maeve O'Rourke and Deputy Gannon a number of weeks ago to discuss that suggestion and they outlined the vision for me. I am open to that.

Senator Mullen asked about the Ryan report. I am not an expert on it and it does not fall within my Department's remit, given that it remains with the Department of Justice and Equality, but my understanding is that the legal framework involved was different. I do not believe that its commission was established under the 2004 Act. Am I correct in saying that, Senator McDowell?

Senator Michael McDowell: Yes.

Deputy Roderic O'Gorman: Its terms of reference stated that the records were to be destroyed at its conclusion. That was an issue of significant debate in a previous Oireachtas and there was a Bill on the issue, although it did not pass. The matter remains to be addressed by the Minister for Education and Skills.

Senator Michael McDowell: In view of what the Minister has said, namely, that he proposes to bring before Dáil Éireann an amendment to this legislation to allow some mechanism for the wishes of the people who were before the confidential committee to get a thumbs up or thumbs down as to whether their records can be anonymised or sent forward unredacted, I do not want to press my amendment further, given that that is what I set out to achieve at the beginning. I wish to make that point in case we spend another half hour discussing the matter. I am happy with that.

I wish to make two comments. I tabled an amendment as part of a suite of amendments to extend the life of the commission. I was told that, under the Standing Orders of this House, since any extension might involve extra expenditure of Government moneys, someone like me could not make such a suggestion. I accept the rulings of the Chair but that Standing Order will have to be addressed. It is ridiculous.

If the Minister amends the Bill in the Dáil, he will have to return it to this House. I look forward to seeing him again. I thank the Minister.

An Cathaoirleach: Before the Senator sought to withdraw the amendment, Senators Dolan, Seery Kearney and Mullen had offered.

Senator Aisling Dolan: I will be brief. I thank the Minister. What he said was welcome to hear. For many of the volunteer groups, it will be welcome news. While having a database is important, the groups speak about how having access to original records for people whose loved ones went through this, for example, a copy book or something else that their loved ones produced, would mean a great deal.

By “non-redacted”, I meant that the documents would be transferred to Tusla in a way where there would be no redactions. Therefore, the database would be much more valuable. I just wished to clarify that.

Senator Rónán Mullen: I thank the Minister for his openness and, in particular, his response to my question. However, I have a number of remaining questions. I noted the Minister’s comments on the Ryan commission and the legislation on which it was based but it is interesting that its terms of reference provided for the destruction of data. On Senator Seery Kearney’s point, is it the Minister’s view that the only information being transferred from the confidential committee is the report or will other documentation relating to the confidential committee also be in play and be transferred, presumably to the Minister as opposed to Tusla? Sin ceist a haon.

If the Minister is considering tabling an amendment in the Dáil, which we wish he would table in the Seanad,-----

Senator Michael McDowell: Hear, hear.

Senator Rónán Mullen: -----how will it work in practice? Is he suggesting that he will consider tabling an amendment that will enable the commission to establish the will of those who attended the confidential committee as to whether their names should be redacted from the information to be sent forward? If so, within what timeline will that happen and how can the commission then dissolve by 30 October? Is it the Minister’s thought that all of that work might be done ahead of its dissolution or is he suggesting that the report will be delivered on 30 October and the transfer of information might continue afterwards under the aegis of the commission? Sin ceist a dó, a trí agus b’fhéidir a ceathair.

The Minister mentioned that, if the legislation did not pass, the information that he wanted to pass on to Tusla - the database and so on - would be sealed within the Department for 30 years. Is that really a problem, though? If he were to introduce legislation on information and tracing anyway, could he not make whatever provisions he wished in it to enable access to the information in question? Sin ceist a cúig.

5 o’clock

Senator Victor Boyhan: I genuinely thank the Minister because he has sat here for many hours and listened. That makes a big difference. We do not know exactly what the Minister is proposing but we take it in good faith. I hear what he is saying. I know he has certainly listened and I thank him for that. I also thank the Members across the House because this has

been a really good debate. There are conflicts. When I first thought about amendment No. 2, I felt there were difficulties with it but when I worked it through and talked to so many others and had it endorsed, I knew it was the right thing. I thank the Minister for the spirit in which has engaged with us here today. Clearly, he has a lot more thinking to do about this and must get more advice and engage in consultation but I wish him well in this regard. If the measure is approved by the Dáil, I have no doubt it will be back here. Valuable contributions were made by everyone. That indicates how complex this whole issue is. I get a sense that the Minister has picked up on the complexity, diversity and divergence, yet the central theme is ultimately justice and support for the great survivors of these horrible tragedies and travesties. I thank the Minister genuinely and sincerely for listening and for his response to this debate.

Senator Rónán Mullen: I forgot to add one important question. In my last contribution, I surfaced the issue of where information given by an individual to the confidential committee might adversely affect other people's reputations or make claims about other people, living or deceased. Therefore, the question of redaction, or otherwise, does not just concern the wishes of the person giving information to the confidential committee and whether he or she wants his or her name associated with it; it also concerns the content of what has been said and how it might affect living or deceased persons, having regard to the fact that those persons would not have the benefit of what Senator McDowell has described, that is, the adversarial process or what we might call the "in re Haughey" rights. Will the Minister also consider that as a key issue as he considers his possible amendments?

Senator Michael McDowell: Senator Mullen's five or six questions do require to be answered insofar as the Minister can do so. If the commission asks for another few days to carry out the consultative process, whatever that entails, I presume the Government will not force it to finish by 30 October in circumstances in which what the Minister is announcing to us now has yet to become law and all the rest of it. It will be a very tight timeframe. By the time this goes through the Dáil, comes back to the Seanad and becomes law, the commission will have a matter of only 72 hours or so to engage in the consultation. Therefore, a short extension would be a good idea. I presume the commission would seek it. I never look a gift horse in the mouth and I thank the Minister for what he has indicated that he proposes doing but I do want to put a marker down that I am holding him to the bargain. I do not want him to say in the Dáil that he has changed his mind again and that he got away with it in the Seanad, and that they fell for it. I want to have a clear understanding that we are taking the Minister at his word and that he is going to do in the Dáil what has been proposed and bring it back here. To save us a lengthy debate in the Seanad on the next occasion and so we will not find out at the eleventh hour and 59th minute what the Minister is proposing, it might be a good idea if he notifies us as soon as he has the amendment drafted. Certainly at that stage, the Minister will be saying he cannot amend the legislation a second time and bring it back to the Dáil. It would be fair to this House and in a spirit of co-operation for him to signal to us what he is doing at the earliest available opportunity.

Deputy Roderic O'Gorman: I beg Senators' indulgence regarding the details of this. I had a conversation late last night with the Attorney General in which I asked him to start work on it. When my telephone rang very rudely at the start of this debate, it was the Attorney General looking to talk to me. Most of this morning was spent preparing to speak to the Senators today so I do not have the firm details at this stage, but I am happy to make a commitment that, when the draft amendment is ready, I will ensure it is supplied to Senators so they can scrutinise it.

As regards the database and the question as to the harm in allowing it to rest in the archive

until such time as information-and-tracing legislation is produced, Senator Bacik made the point that it did not get delivered in the term of the last Dáil. I do not believe any of us thinks the information-and-tracing legislation will be produced quickly. It should not be. It should be done right, and appropriate time should be allowed. The database does provide a benefit now. It will provide a benefit to Tusla in its existing functions. We are all aware that these are inadequate as regards information and tracing but the database will provide a benefit. That benefit, plus the certainty that the database is not in the archive, is worth passing this legislation for.

Senator Rónán Mullen: To close off on this, because it relates to the confidential committee, I draw attention to the last question I asked. I am not asking the Minister for detail but I am asking him to consider the specific issue I raised, namely, possible adverse testimony affecting people, living or dead, whose names might be the subject of a question on whether to redact.

Amendment, by leave, withdrawn.

Section 1 agreed to.

SECTION 2

Senator Alice-Mary Higgins: I move amendment No. 3:

In page 4, line 5, to delete “Agency” and substitute “Authority”.

Amendment put and declared lost.

Senator Alice-Mary Higgins: I move amendment No. 4:

In page 4, line 5, to delete “Agency” and substitute “Minister”.

Amendment put and declared lost.

Senator Alice-Mary Higgins: I move amendment No. 5:

In page 4, line 5, after “Agency” to insert “and/or the Authority”.

Amendment put and declared lost.

Senator Alice-Mary Higgins: I move amendment No. 6:

In page 4, line 8, to delete “Agency” and substitute “Minister”.

Amendment put and declared lost.

Amendment No. 7 not moved.

An Leas-Chathaoirleach: Amendments Nos. 8 and 9 are related and may be discussed together, by agreement.

Senator Alice-Mary Higgins: I move amendment No. 8:

In page 4, between lines 9 and 10, to insert the following: “(3) At the same time of deposition with the Agency, a copy of the database and related records shall be deposited with the Minister.”.

Amendments Nos. 8 and 9 relate to the idea of the database as a useful tool and something

the Minister has described as potentially important and valuable in terms of the work of Tusla. I raised this issue and did not get a satisfactory answer. Since this legislation sets out where the database might be deposited, I do not see anything that would preclude us from having the database also deposited, as I have mentioned, with the adoption authority which has a large number of files and would substantially benefit from being able to do work in the interim before there is information and tracing and in ensuring it deals appropriately with people's subject access requests where it to have a copy.

Similarly, it is vitally important that the Minister has a copy. These amendments speak first to the idea that a copy of the database and of the related records should be deposited with the Minister because, as my colleague, Senator Ruane, eloquently put it, this Bill primarily takes a full body of the work of the commission and splits it in two. There will be no unified set that may, for example, be treated in whatever complex way it needs to be treated in terms of ensuring a future unified set of documents. We may hope that in 30 years' time some pieces of them will come together again and be put back together by some historians but, effectively, there is a split in the material. There are the documents which are deposited with the Minister and then there is the set of documents of related and relevant records, not simply from Tusla but from many other bodies and public bodies which Tusla will have along with a database. Then, there is all of the record of the work of the commission, that is, the documents created for and by the commission which are with the Minister. There is a fundamental problem if we talk about it being ineffective or a concern. In terms of the long-term record keeping of this State, it is ineffective if there is not a situation where we know there is at least one place, be it accessible sooner, as I believe it should be, or if it is only accessible in 30 years. However, at least we would know there is one place with at least a copy of all records where the full picture is stored and where the full picture can be painted.

The Minister will receive subject access requests. I am aware those are the issues we will have to debate and he will have to look at how they will be dealt with. The database will also be extraordinarily important for the Minister with regard to those subject access requests. There is nothing that precludes a copy of the database. I say the database and relevant records because I firmly believe there should be somewhere in this State where all the story is together and told. I urge the Minister to do this not to undermine Tusla receiving, perhaps, even the originals or the copies but to ensure there would be a full copy.

The other issue is the database and the word "explicitly". I do not have an amendment saying just that the Minister would have the database. However, I raised a challenge to the point he made earlier. Will the Minister, perhaps, reassure me that he will have a copy of everything in one place?

An Leas-Chathaoirleach: I understand the Minister has some information he wishes to relay.

Senator Alice-Mary Higgins: That is perfect. If there is some useful information I am happy to receive it.

Deputy Roderic O'Gorman: My apologies. I wish to indicate that I would like to come in soon after the Senator. She may want to hear what I have to say.

Senator Alice-Mary Higgins: Absolutely. I am happy to do that. I will not speak for much longer. My key concern about the question of the database is that I was dissatisfied with the ear-

lier answer. The Minister seems to be signalling that, perhaps, he has more positive answers to tell me now. In terms of the earlier answer, however, I do not believe being inefficient is an adequate argument for the database not being placed elsewhere besides with Tusla. An argument of duplication is inefficient given there are different jobs that Tusla may be mandated to do and that the Minister may be mandated to do in respect of the database in the future. The argument of inefficiency with regard to that database is inadequate, especially in a circumstance whereby there are no data processing agreements. Again, if there was a single data controller and a suite of data processor and data sharing agreements put in place which would allow relevant bodies to access the same database, perhaps, there might be an argument for saying a central repository would be more efficient. In a circumstance where we do not currently have those, however, it is, in fact, potentially negligent to solely have one location for such a crucial tool.

I urge the Minister to take a copy of the database. If he wanted to give the powers to Tusla then he can but he goes out of his way in this Bill to remove access to the database from himself. It is even put into the Title of the Bill. It is almost a gratuitous act of future self-sabotage. The Minister has signalled a wish to speak so I hope there is something he might say. If he does not accept my amendments, I urge him to indicate in the Dáil in the context of an amendment that he will ensure he will have a copy of the database. It is the first step towards the index which is what we all really want to see.

Deputy Roderic O’Gorman: When I spoke to the Attorney General yesterday on the previous points we discussed I also indicated I would like him to bring forward a proposal for an amendment in the Dáil which will address the specific issue and see if there is a way of ensuring a complete set of records and the database are included in the archive from day one. I asked the Attorney General to draft an amendment which will provide for that. That is how I am seeking to proceed.

Senator Alice-Mary Higgins: I thank the Minister for that. It is very good. Out of respect for all my fellow colleagues in the other House in the Dáil, I still believe it would be best practice if Deputies were also able to hear this debate and draft versions of what that should look like. The Minister has the prerogative of still introducing amendments but nobody else in the Dáil does. I am thankful to the Minister. I still regret the process somewhat because it is not ideal to have only one possible source of amendments going into a full half of the legislative process. I thank the Minister for that, however, and I believe it will prove to be a wise decision in the future.

An Leas-Chathaoirleach: Is the Senator pressing amendment No. 8? Did Senator Warfield indicate?

Senator Fintan Warfield: I wish to speak to the section.

An Leas-Chathaoirleach: We will come back to that in a moment.

Senator Alice-Mary Higgins: I will press amendment No. 8. I will not press amendment No. 9.

Amendment put and declared lost.

Senator Alice-Mary Higgins: I move amendment No. 9:

In page 4, between lines 9 and 10, to insert the following: “(3) At the same time of depo-

sition with the Agency, a copy of all related records shall be deposited with the Minister.”.

Amendment, by leave, withdrawn.

Question proposed: “That section 2 stand part of the Bill.”

Senator Fintan Warfield: The Leas-Chathaoirleach will see that Sinn Féin opposes section 2 outright. Obviously, we are discussing the deposit of certain records of the commission with the Child and Family Agency, Tusla. In terms of opposing this section outright, we wish to see Tusla removed as the depository for records and that we reassert the 2004 Act provisions for the depositing of records with the Minister and the right of access to personal information to be held by the Minister.

Will the Minister reiterate the point about why the records are being broken up? Why are some suitable to be held by his Department and others not? As I mentioned, Sinn Féin objects to Tusla having guardianship over some of the records. Many of the survivors offered testimony. Their testimony is contained in these records and they have had their own negative experiences of dealing with the agency, especially concerning adoption matters. Along with Deputies Mitchell and Funchion, I have sat with the former Minister for Children and Youth Affairs, Katherine Zappone, to discuss the negative experiences people have had with Tusla concerning access to the family name. This has added to the trauma of many survivors. Our amendment simply strikes out the section referring to Tusla. It is not beyond the ability of the Oireachtas to legislate for how anonymised and voluntarily offered testimony and details could be used for interpretive and historical scholarship reasons. Many survivors do not trust Tusla to handle the records. Specifically, at a future point some survivors may wish to voluntarily grant their records and testimony to interpretive projects that they deem acceptable. This could all be underpinned by legislation to ensure that those who wish to remain anonymous forever can have that wish respected.

In September, the general scheme of the Bill and associated briefing paper referred to 11 institutions whose associated records would be lodged with Tusla. The ministerial briefing with the Bill mentions 15 institutions. What process was undertaken to decide which other institutions would be added?

I add my voice to the concerns expressed about the process today. We were due to table an amendment to the Order of Business. As it turned out, we supported Senator McDowell’s amendment to take only Committee Stage today. I made the point then that the purpose of having Report Stage at a separate sitting is for the Seanadóirí, the Minister and his officials to consider all the amendments, even those defeated today, in the intervening period. In the past, Ministers have considered defeated Committee Stage amendments and brought forward their own amendments on Report Stage. We have been abusing how this House functions with many Bills of late.

Senator Lynn Boylan: I also want to speak to the amendment to delete section 2 in its entirety. Senator Ó Donnghaile cannot be here because he is self-isolating, but he would like to speak on this Bill which is incredibly important to him.

Having listened to the Minister, I welcome that he is taking on board some of the concerns that Members of this House have raised with him, but once again I point to the process. Senator McDowell is completely right. If the Minister is to introduce an amendment dealing with the commission consulting those who want their details anonymised and those who do not, we

do not have time to bring it back through the two Houses and for the commission to do that appropriately. I hope it is not a box-ticking exercise to try to get the Bill through the House and that it is a genuine measure on his part.

On our reasons for wanting to delete section 2, I was heartened that the Minister said it was all about agency. Senator Ruane stressed the importance of asking people what they want. That is why I do not understand the Minister's decision to send this database to Tusla. The collaborative forum of former residents of mother and baby homes that was established specifically to advise the Government has repeatedly stated that Tusla should have no further role in adoption information and tracing. Therefore, we are ignoring the former residents of the mother and baby homes. It is also the overwhelming view of survivors, their families, their legal representatives and the advocate groups that Tusla is not the appropriate controller of these records.

Even those who were not associated with mother and baby homes will speak of their experience of dealing with Tusla. Tusla regularly cites unverified information that somehow those who will get their information will go and track down their natural parents when there is no evidence that that happens. Tusla puts them through the ringer in assessing whether they should get their information. Why is the Minister ignoring the views of the survivors, the collaborative forum and the legal representatives in pursuing Tusla as the body to hold on to this database?

I welcome that the Minister is considering keeping the archive in its entirety. That is essential. I echo what Senator Higgins said about him depriving Members of the Dáil of an opportunity to proposing their version of how that should look. Historians and others will say that it is best practice to keep an archive in its entirety and not to break it up. I hope the Minister will introduce an amendment to do that and that the archive will be kept in one place with him. We do not believe these files should go to Tusla and we would like to hear his justification for that. The entire archive could rest with the Minister and he can develop legislation to cover how it is accessed.

Senator Ivana Bacik: The Labour Party Senators oppose section 2 and propose its deletion for the reasons I outlined, both on Second Stage and earlier on Committee Stage, our concerns regarding the need for the legislation and the concerns others have expressed on preservation of the archive. It is important to see a commitment to establishing a dedicated archive in which could be housed all historical records, databases and findings of other commissions into institutional abuse also. Senator Sherlock has strongly advocated siting such an archive at the former Magdalen laundry in Seán McDermott Street.

I am very encouraged to hear the Minister engaging with Senators Higgins and McDowell on the amendments and committing to consulting the Attorney General to introduce amendments in the Dáil. As the Seanad will sit next Friday, there is time for amendments to be taken in the Dáil on Wednesday and Thursday next week when the Bill is scheduled to be debated and then to be dealt with in the Seanad on Friday. I offer the Minister that in the spirit of being constructive.

As others have said, this is not an appropriate way to legislate. It is very rushed, and it would be far preferable if the Minister could come back to us on Report Stage on another day with the changed versions of the amendments he has committed to review. I welcome his engagement on that. I hope he will have a similar view on some of the later amendments, in particular the Labour Party amendment No. 12 and other amendments we have tabled.

Senator Mary Seery Kearney: I have already expressed my reservations about how Tusla is handling the data. Some of the emails - I have subsequently spoken to some of the people who sent them - have been quite appalling in detailing a lack of sensitivity and Tusla's absoluteness about how it handles the data. I support section 2 and oppose the amendment on the basis of the Minister's stated intention to advance a more suitable body to deal with tracing and to assist in the future. My query is on a timeline for that.

Senator Mary Fitzpatrick: I thank the Minister for coming to the House. I share all the concerns and frustrations that have been well aired. I spoke to the Minister about this. This is not how I would like us to do our business. A matter of this seriousness and importance should not be rushed in any way. The survivors and everybody involved have been waiting far too long for justice and reparation. As we have already had a few hours of debate on it, I will not rehearse those lines.

I welcome that the Minister has listened to some of what we said on Wednesday. I am encouraged that he is talking to the Attorney General to try to find a way to accommodate some of the reasonable, fair and legitimate requests. We all agree it is very important that all the data, documents and records are preserved and protected unredacted. It is essential for integrity that the records are kept in one set. Then, if there is to be a separate database, as is proposed, it should be a duplicate. For the archive to have integrity, it must be kept intact. There must be one set of it intact. I heard the Minister's earlier comments that he will examine the waiving of anonymity and potentially will bring forward amendments next week to the Dáil. That is welcome. One of my other requests was that an anonymised index of the archive would be produced and released. I hope that is something the Minister is trying to progress in his discussions with the Attorney General and his Government partners. Perhaps he could give the House some indication on that request.

I have mentioned a proposal that has been made, and I believe the Minister has received it. It is a concept proposal at present for the former Magdalen laundry site on Sean McDermott Street by the Adoption Rights Alliance and Dr. Maeve O'Rourke. The doors of the laundry on Sean McDermott Street were closed in 1996 and it was 1998 when the site was handed over by way of reparation to the State. The city council holds it in trust. The Government can take the initiative to work with the city council. The concept proposal for that site provides a great opportunity to offer meaningful reparation by creating an appropriate memorialisation on the site of the Magdalen laundry, as well as of all the industrial schools and other institutions. It can create a site which survivors and historians can visit. For members of the public, it can be a site for learning and reparation. I urge the Minister to champion that proposal with the city council and his Government partners, in order that it can be moved from a concept to reality.

Senator Erin McGreehan: I have a few brief comments. First, I wish to thank the Minister. Clearly, he has listened. There have been many conversations and back-and-forth between me and his office, and I have been bothering the Minister for the past week or so. I appreciate his candour and his listening to the debate. I enjoyed the excellent discourse today. I echo Senator Fitzpatrick's views on the anonymised index. I made my view on that issue very clear to the Minister previously, as well as on the site on Sean McDermott Street.

Senator Paul Gavan: I wish to comment briefly on this section because it is crucial in terms of the interactions we have been having with victims and survivors of these institutions. One of the key points survivors continuously make is that their voices are not being heard or listened to. They have been very clear as to why Tusla is not an appropriate place in which to

deposit this information. Members who have read the horrifying testimonies that have come in over the last few days know exactly what they are talking about.

I wish to make two points to the Minister. The first relates to process. There is no way the Minister would have had the time or the availability in the last couple of days to go through those testimonies. It is just not possible because of this rushed process. These people are being ignored once again. That is a choice the Minister made. The second is that their key request is not to deposit the information in Tusla. The Minister has ignored that as well. It is tragic and at the same time somewhat shocking that we have a new Government in place that is once again ignoring the voices of these people. I am genuinely shocked that a Green Party Minister would facilitate this.

The evidence is clear. I know from my time as a member of the education committee last year and from meeting some of the victims how appallingly they have been treated and how they have been shut out by Tusla, yet the Minister is ignoring their voice on this absolutely central issue. With the greatest respect, regarding the promise that he will fix it somehow later with more legislation, if he was in their shoes would he believe himself as Minister? I do not doubt the Minister personally but we know how the institutions work here. We know how they like to close down people's voices. They have been shut out for decades. Unfortunately, I still see that culture in key Departments. That is the truth of the matter. I do not see any evidence that it is changing.

This is a central part of the Bill, and it is wrong. The Minister does not have to take our word for it. A multitude of people, some of whom are outside today, are begging the Minister not to do this and not to leave them, once again, to twist in the wind and to have to approach Tusla and basically to be denied at every step and turn of the way. This is critical. If the Minister really wants to engage, he must accept what we are saying. This process is appalling in terms of how quickly the Minister is trying to railroad this Bill through. It is a disservice to this Chamber but it is an absolute shame with regard to the victims of State and church institutions.

Senator Aisling Dolan: I will follow up on some of the points Senator Gavan made as well. There are many volunteer groups helping survivors and members of their families to access these documents at present. The original records are still with the Departments. There is a challenge in the time and effort required to do that, but survivors and members of their families are accessing some of that information at present through the volunteer groups that are working on their behalf. However, it is not an easy process.

An Leas-Chathaoirleach: Does the Minister wish to reply before I put the question?

Senator Alice-Mary Higgins: May I make a brief point?

An Leas-Chathaoirleach: Yes.

Senator Alice-Mary Higgins: I would appreciate it if the Minister would include it. Other Members have spoken on the wider issues, and I spoke about them at the beginning of this debate. Tusla's record has not been good. However, I have not received replies on the other issues I queried. I urge the Minister to give me a response to them and if he cannot, he needs to be able to deal with those issues and respond to them in the Dáil. Is there any guarantee that the documents that might be given to Tusla will be kept to the standard that is appropriate for a place of deposit and that they will be kept in one place and copies only made as required? The documents transferred to Tusla must be kept in one location. I mentioned this with regard to

the Adoption Authority, but I now ask the Minister this question specifically in respect of Tusla. The 2017 legislation on the Adoption Authority set out how these would be treated but this Bill does not do that.

It is clear that the Minister will put forward amendments in the Dáil and I urge him to look to the language on the Adoption Authority in the 2017 Act because we must be assured, and I have not yet received any such assurance from the Minister, that the records given to Tusla with the database will be kept in a single location. The Minister answered me about the ICT capacity. I spoke to one of his advisers and was again told about the ICT capacity and GDPR. I am talking about the physical copies of the records being kept in a unified place. I realise originals are with documents, but they are scattered across the massive apparatus of the State and its many bodies. Will they be kept in one place and will they be kept to a strong archival standard? Again, I do not believe Tusla is the right place for this, but, in the interim of one or two years or however long it might be before an appropriate place is found, we want to ensure that we do not lose cohesion in these documents and see valuable records lost.

Deputy Roderic O’Gorman: I hear the criticisms of Tusla. From my engagement with the current legal infrastructure for information and tracing, which we know is insufficient, many of the barriers encountered by people seeking information about their birth mother or siblings result from the inadequacies in the existing information and tracing. That is why we need to change that legislation. If there are situations where there is bad practice in Tusla, as its line Minister I am happy to engage with any Senator in that regard, but the core problem is with the lack of adequate legislation. That is something all present agree is needed. I am happy to engage further directly with Tusla on the specific point raised by Senator Higgins relating to the records.

As regards Sean McDermott Street, I saw that concept design recently. It is very impressive. I need to know more about it. It is quite extensive. There are several elements. Obviously, the city council and the Government are at play. I am happy to engage further in that regard.

Senator Warfield asked about a difference between an initial briefing document given by the Department and the subsequent document. He made the point that the initial document named 11 institutions whereas the latter document named 15 institutions. The difference arises from the fact that the initial document did not list the four county homes. That was a formatting error. The records come from 15 of the 18 mother and baby homes and four of the county homes. My understanding from engagement with the commission is that for three of the homes there were no records available.

Senator Mary Fitzpatrick: I asked the Minister to indicate if he was pursuing with the Attorney General amendments to allow for an anonymised index. I did not hear him reply to that query.

Deputy Roderic O’Gorman: I will deal with that issue under a later amendment. I am not pursuing an amendment on that point, having engaged with the commission and received an indication of a very extensive index it will provide. I will deal with the issue at a later stage but I am not pursuing such an amendment because the commission has given me an indication that the index it will compile will be a detailed 80-page index setting out the various matters. I think that will address the issues around indexing.

Question put:

The Committee divided: Tá, 23; Níl, 13.	
Tá	Níl
Ahearn, Garret.	Bacik, Ivana.
Buttimer, Jerry.	Black, Frances.
Carrigy, Micheál.	Boyhan, Victor.
Casey, Pat.	Boylan, Lynn.
Cassells, Shane.	Craughwell, Gerard P.
Conway, Martin.	Gavan, Paul.
Crowe, Ollie.	Higgins, Alice-Mary.
Currie, Emer.	McCallion, Elisha.
Doherty, Regina.	Moynihan, Rebecca.
Dolan, Aisling.	Ruane, Lynn.
Fitzpatrick, Mary.	Sherlock, Marie.
Gallagher, Robbie.	Wall, Mark.
Hackett, Pippa.	Warfield, Fintan.
Kyne, Seán.	
Lombard, Tim.	
McGahon, John.	
McGreehan, Erin.	
Murphy, Eugene.	
O'Loughlin, Fiona.	
O'Reilly, Joe.	
O'Reilly, Pauline.	
Seery Kearney, Mary.	
Ward, Barry.	

Tellers: Tá, Senators Robbie Gallagher and Seán Kyne; Níl, Senators Fintan Warfield and Paul Gavan.

Question declared carried.

6 o'clock

SECTION 3

An Cathaoirleach: Amendments Nos. 10 and 11 are related and may be discussed together by agreement. Is that agreed? Agreed.

Senator Alice-Mary Higgins: I move amendment No. 10:

In page 4, line 22, after “2018” to insert “and regulations made under those Acts”.

Senator Michael McDowell: Amendment No. 7 has not been discussed.

An Cathaoirleach: The amendment was not moved.

Senator Michael McDowell: I will withdraw amendments Nos. 7 and 21, in view of the Minister's statement.

An Cathaoirleach: Amendment No. 7 was not moved.

Senator Michael McDowell: I will not be moving amendment No. 21 either.

An Cathaoirleach: It can be withdrawn when we reach that stage.

Senator Alice-Mary Higgins: Amendments Nos. 10 and 11 are coming at the same point. I am not sure if amendment No. 11 is necessary but I am seeking assurance from the Minister. I do not think I will need to press the amendments. It is my understanding that they may even be redundant but I want to know if that is the Minister's interpretation of the legislation because, if his interpretation aligns with mine, I do not need to press these amendments.

The amendments apply to the processing of the records by the agency. Parts of the database are compiled from related records that were given by other bodies, not the agency itself, and so forth. I would have liked if there was a positive framing in the legislation and if section 3 referred to circumstances "under which it shall be lawful", if the Minister knows what I mean, rather than how it is now worded. It is framed in the reverse at present, in that it refers to the restrictions on processing, rather than recognising there is a legitimate basis for it. The section is framed in such a way that it is not lawful to process records unless certain circumstances pertain. Section 3 states that processing records is not lawful:

... unless the processing of any such part, any such related record or any such information is—

[...]

authorised or required by or under the Data Protection Regulation, the Data Protection Acts 1988 to 2018 or any other enactment (other than this Act).

I wanted to be clear about the reference to "any other enactment". Is the Minister's interpretation that regulations that might be made under data protection regulations or the Data Protection Acts are also included? Are statutory instruments and other regulations that the Minister might make included? Statutory instruments might be made on one hand, while on the other, there are the capacities that the Minister is granted under the Data Protection Acts to make regulations in the public interest, subject to suitable and specific measures.

People have expressed many concerns about Tusla. One of my concerns about the agency is its interpretation of the general data protection regulation, GDPR. We have talked about whether new legislation is needed, and the Minister spoke about new legislation and information tracing during the discussion of the previous section. There is considerable scope for the use of statutory instruments and regulations under the Data Protection Act prior to the introduction of new legislation on information and tracing. There is provision under the Data Protection Act for the Minister to allow certain forms of data processing, indeed to waive some of the restrictions on dealing with personal data, where it is in the public interest and, of course, subject to necessity, proportionality and what the Data Protection Act describes as "suitable and specific measures". There is a suite of appropriate options that the Minister may apply. There is already a mechanism for the making of regulations that may address these issues. I am concerned because it seems that Tusla's interpretation has consistently been that things can only be changed through

primary legislation when, in fact, a large amount could be done without primary legislation. I have been frustrated, specifically on the tracing issue, when representatives of Tusla have said they were unable to get a document from another body because of GDPR. It is using GDPR in a short and abbreviated way. GDPR is not mainly about privacy and secrecy but is, rather, empowering legislation. It is about empowering appropriate access and use of data, tracking it and ensuring transparency in how data and information are used. It is not intrinsically designed as a brick wall or an instrument of privacy.

I have submitted these amendments because I want the Minister to confirm that his understanding of “Data Protection Acts” encompasses the regulations he might make under those Acts and that his interpretation of “enactment” encompasses statutory instruments such as he might make. Those are two tools that the Minister has at his disposal. To be frank, information and tracing legislation will be complex and take a couple of years. There will be circumstances in which people cannot wait for information. We need to ensure they do not hit a brick wall with Tusla, especially if it is to hold the records and the database, between now and the enactment of such legislation. Tusla cannot state that there is nothing that can be done and tell people to wait for the legislation. There are things that can be done to address specific concerns which may be relevant. That may also apply in the case of the next amendment proposed by one of my colleagues, but I will not speak to that now.

Senator Mary Seery Kearney: I will be brief. I have sympathy with the position of Senator Higgins, which I appreciate, as she knows. We are of one mind on Tusla and the Data Protection Act. I think this is a belt-and-braces approach when, in actual fact, primary or secondary legislation, or anything that flows from the original Acts, should automatically be adhered to and be conditional on the proviso that the processing of records would not be lawful unless certain criteria are met. It is within the gift of the Minister to create legislation that will support that.

Deputy Roderic O’Gorman: I hope I can address the points raised by the Senators. I share Senator Higgins’s interpretation and, on the legal advice we have received, we are assured that the legislation deals appropriately with data protection considerations relevant to the Bill. We share the Senator’s interpretations on the points she has raised.

Senator Alice-Mary Higgins: I thank the Minister. That was the intention of the amendments and I am glad to have that clarification. It is important that Tusla is also aware that this is the interpretation. The Minister has indicated genuine commitment to moving on these issues. I urge him to use the two other powers he has to address some of the concerns that will arise, aside from the major legislative change that we need. I am glad he recognises these powers and I hope he will use them. In that context, I will withdraw the amendments.

Senator Paul Gavan: Sinn Féin will be consistent and will oppose this section. We do not believe that Tusla should be receiving this information and for this reason, we cannot support the idea that it would be acceptable for Tusla to process it. We will oppose the section as the victims of church and State abuse would want us to.

Amendment, by leave, withdrawn.

Senator Alice-Mary Higgins: I move amendment No. 11:

In page 4, line 22, to delete “enactment” and substitute “legislation”.

Amendment, by leave, withdrawn.

An Leas-Chathaoirleach: Amendments Nos. 12 to 16, inclusive, 24 and 26 are related and may be discussed together by agreement. Is that agreed? Agreed.

Senator Ivana Bacik: I move amendment No. 12:

In page 4, between lines 26 and 27, to insert the following:

“(3) Neither this Act nor the Act of 2004 shall operate to prevent the Agency from processing, or authorising the processing, of information—

(a) for archiving, scientific or historical research purposes or statistical purposes, in accordance with section 42 of the Data Protection Act 2018, or

(b) by providing information about a deceased person to a brother, sister, son, daughter, nephew, niece, grandson, granddaughter, grandnephew or grandniece of the deceased person.”.

I will speak to Labour Party amendments Nos. 12 and 24. I think I speak for my colleagues who have put forward the other amendments in this group that these amendments are about seeking to provide survivors and families with access to information in different ways. The amendments offer a variety of means by which people may access information or records held by the commission or prepared by the commission that may provide them with information on their identity or the identity of family members. As has been said previously by others, including by me in my Second Stage speech and consistently during this Stage, this is a core issue for so many survivors in this legislation. The Minister mentioned in his opening statement, and a number of other times today, that this legislation is not about providing access to information. It should be, and that is the point we are making in these amendments.

Amendment No. 12 seeks to set aside the default rule that if this legislation did not pass, the archive of the commission would be deposited with the Minister and be sealed for 30 years under the 2004 Act. We are trying to carve out an exception to that rule, but one that enables the processing of information for archival purposes and that enables information about deceased persons to be passed on to family members. The overwhelming majority of the messages we have received are about people who are desperate to get that information, which is information that helps them to uncover information about their identity and some knowledge about their origin or the origins or lives of people in their family. This is crucial. References to this legislation being technical and related to a database has caused such people distress. This is information about living people today and people who lived, died and were family members, about whom they know so little, but about whom they also know records exist and are kept by State agencies to which they cannot have access currently. Amendment No. 12 seeks only to carve out a limited exception to the 2004 Act and other provisions of this Bill so that they will not operate prevent the agency from authorising the processing of information for archival, scientific or historical research purposes or for providing information about a deceased person to that group of family members. We are trying to change the default, as the Minister says he is trying to do with this legislation, but to change it in such a way that it respects the rights and wishes of individuals who may seek their identity information. This a core and important principle for us.

Amendment No. 24 seeks to do something else. Other Senators have signed up to this amendment. I thank Dr. Meave O'Rourke who has done so much work with all of us on amend-

ments to try to improve the legislation. The amendment seeks in a different way to provide access to individuals who seek personal data relating to them. What we are seeking to do in this amendment in referring to the data protection regulation is to enable the Minister to respond to requests for personal data in the commission's archive when he receives it. We believe there is no principled reason the Oireachtas should not legislate to ensure that the Minister, in this case Deputy O'Gorman, can respond to personal data access requests once he has taken receipt of the archive. We are not bound by the 2004 Act. We can legislate to change the sealing requirements, as we are doing in this legislation by enabling Tusla to take the database. So too can we legislate to enable people to access their personal data through the data protection regulations or by amending this legislation, as we have proposed in amendment No. 12, setting out this exception to the 2004 Act and enabling people to access information.

For us, No. 12 is the core amendment. Amendment No. 24 and the other amendments offer alternative means, but all of them are about trying to ensure people have access to identity information, in some cases about their birth and in other cases about the births or deaths of family members. It is a critical principle for us that seeks to secure protection for the right to information, to identity and to rebalance the rights in that way, which is more important for the survivors.

Senator Elisha McCallion: Is amendment No. 24 included in this group?

An Leas-Chathaoirleach: Yes. Amendments Nos. 24 and 26 are related and it has been agreed to take this group of amendments together.

Senator Elisha McCallion: I would like to speak to amendment No. 24. Many Senators have spoken about various experiences - some of the personal experiences and others the experiences of people they know. I was struck by what I was told by a colleague an hour or so ago regarding the experience of one of his neighbours. I am sure that like me every Senator has been inundated with thousands of messages from people pleading with them to ask for their voices to be heard. I have worked in a number of institutions. I am well used to lobbying and lobby responses. I have never seen such a volume of lobbying in such a short time from so many people. It illustrates how passionately people feel about this issue. I have read many of the responses and I have spoken to many of the ladies here today, one of whom told me she had to fight with her 81 year old mother not to come down here today

An Leas-Chathaoirleach: The Senator must speak specifically to the amendment.

Senator Elisha McCallion: My point relates to information. Information is key and, therefore, access to information is vital. That is what these people are looking for. They do not understand, nor do they appreciate, technicalities. Frankly, neither do I. I am a mother. I know my background. My children know who I am and they know their grandparents, which, I suspect, is the situation for many in this Chamber. That fundamental right has been stripped from these women. If this Bill passes in its current form, people will continue to be stripped of basic information to which they are entitled.

I plead with the Minister and all Senators who have spoken - I do not doubt the sincerity of the Senators who are speaking from the heart on this issue - to listen to the people who were involved. I take issue with us still calling these detention centres "mother and baby homes". They were not homes; far from it. We need to accept the severity of what these women experienced in these detention centres under the guise of Christianity. God forgive anyone who was

involved in that type of behaviour and tried to portray it as a Christian act. We have a duty and a responsibility to the survivors of this serious injustice. If we fail to hear or listen to them and we fail to act on what they are asking for, it is an indictment on us. I plead with everyone on the opposite side of the House to support the amendment. People need this information.

Senator Lynn Ruane: I will speak to amendment No. 26. This amendment is a variation of the cross-party amendment No. 24 but its purpose is the same. It seeks to clarify how GDPR and the related sections of the Data Protection Act 2018 will apply to the database deposited with the Minister under this legislation. The Minister will be aware that Article 15 relates to data subject access requests and is the key principle that underpins our European and national approach to data protection. It is built on the straightforward idea that an individual has a right to access the data relating to him or her held by the State. It is a crucial principle in general but it becomes even more vital in sensitive circumstances such as these, where the State holds vital information relating to adopted people and those who grew up in industrial settings like the mother and baby homes and where these documents are the key to finding and formulating their own identities. As a result, if these documents in the State's possession are central to the identity rights of the survivors concerned, then they have to be released.

Our concern is that Tusla has relied on highly conservative interpretations of the GDPR as to what information can be released to the survivors who request it. In correspondence with the Minister's Department - which I am grateful he facilitated - it was stated to me that the restrictions on access are justified under Article 23 of the GDPR to safeguard the operation of commissions and the future co-operation of witnesses. I fail to see how a survivor being given access to his or her own information and records could possibly harm a future commission and I remain unconvinced by this legal view. When I asked for further detail on this questionable legal interpretation, I was told the advice came from the Attorney General's office and that he had refused my request for the advice to be shared. I must tell the Minister that I cannot do my job as a legislator if his Department relies on contested and conservative legal advice on important proposed legislation and then does not go on to share that advice with Members of the Oireachtas. This legal interpretation by the Minister's Department and by Tusla is denying survivors their chance to know their histories themselves and potentially even meet a family member they previously did not know existed. This legal interpretation is relevant to the subject matter we are discussing and it is inexcusable that we cannot access it. I ask for the Minister's support in seeking a Government decision to share it with Members of the Oireachtas. While it may be too late for Senators, it could at least be shared with Deputies before the debates next week. I would appreciate it if a commitment in this regard could be placed on the record today.

Senator Alice-Mary Higgins: I will speak to the three amendments. These are some of the most important amendments of the day. Amendment No. 12 explicitly refers to "providing information about a deceased person to a brother, sister, son, daughter, nephew, niece, grandson, granddaughter, grandnephew or grandniece of the deceased person". One of the greatest sources of distress for families concerns the information about their siblings. For those who have been adopted, this might include learning whether they have siblings and having information about them even if those siblings are deceased. We know, for example, of the extraordinarily high mortality rates in the Bessborough home. It is extremely important that people are able to find that. The Justice for Magdalenes events happen every year in Dublin, Galway and different places and a number of us go to them. Each year, they go to the graves of those who lived in the Magdalen laundries and one of the great sources of distress is that even information on the locations of the graves - the ability to know where one can go to mourn - is something

that has been obstructed, denied and made difficult. Those are the days when people go and try to remember their mothers, in most cases, who may have died within the mother and baby home system. It has been agony for most people to get that information.

There is a strong and usual principle in law that where somebody is deceased, things change as far as access to information is concerned. It is really appropriate, especially in circumstances where we know there were forced adoptions and where women were sometimes lied to about whether their child survived, that if there is any small modicum of light which can be shone for people in relation to a deceased relative, they would be able to access it. There absolutely is scope for the Minister to provide for that. It is important that if Tusla have records or if there is a database, that that be allowed. This is a very strong amendment and I will support it 100%. I notice also the mention of archiving, scientific or historical research purposes but of course, as is made clear here with regard to section 42 of the Data Protection Act 2018, for those purposes it would be important that the Minister would set out suitable and specific measures, safeguards and so forth to ensure all of those things were done in the right way. Again, the Data Protection Act gives him extensive powers to make suitable regulations. As such, he has the powers to make regulations in respect of both of these issues. I hope the Minister will accept this amendment but it might be good if an amendment was added in the Dáil that relates to mothers and fathers because there are some survivors who are still seeking information on burials of children who they may have had inside the industrial homes. This has been a really fraught issue in relation to Bessborough and a real issue of concern. Tuam is not the only situation where there was a high mortality rate and huge numbers of infant deaths. Again, I really support amendment No. 12.

I want to speak to amendments Nos. 24 and 26. I tried to co-sign No. 26 but apparently my co-signature arrived too late. I strongly support it however. These amendments again concern the data protection regulation. We are suggesting the Minister should not be restricting Article 15 of the data protection regulation. Article 15 relates to people's access to their own information. We talked about the GDPR as an empowering piece of regulation, not simply a tool a secrecy. One of the fundamental principles is that people's information is their own. Across many arms of the State there is often a core misunderstanding of that, whereby it gets framed as "Don't worry you won't be identified, it will be a secret and don't worry, no-one will know". That is not the issue; the issue is people's own information being theirs and them being able to access it. The Minister needs to be able to answer data subject access requests and needs to be able to do so in respect of documents lodged with his Department, notwithstanding anything in the 2004 Act. That is not about publishing things for the record, it is about ensuring people can access any of their own critical information that might be there, especially if the Minister has the full repository.

I note also that people have mentioned the concern around Tusla and its very narrow interpretation of the GDPR. I am concerned about the balancing act, which we talked about at great length with the Adoption (Information and Tracing) Bill 2016. There is already a proviso within Article 15 about balancing the rights of an individual and ensuring that it does not impact disproportionately on the rights of others. That is a nuanced balancing act, one that can be and is done in sensitive situations right across Europe. It is doable. When we were debating the information and tracing Bill, there was a lot of discussion of the balancing in the Constitution. We pointed out that there are mechanisms of balancing within Article 15 already that are in fact an appropriate balancing mechanism, especially since EU legislation is also part of the Constitution. Indeed we also have the rights of the child which entered, since any previous

Supreme Court cases, around the balancing of privacy and information. In that respect, I am concerned that trying to take Article 15 out of the picture, so to speak, will roll us backwards in the discussion on how we deal appropriately with a person's access to requests. In that respect, both amendments Nos. 24 and 26 urge the Minister to ensure he does not remove Article 15 and that he rather puts in place regulations and measures to ensure he deals appropriately with Article 15 and that there are measures in the regulations and so forth that balance, as is required already, within Article 15.

Given the very blunt interpretation of GDPR we unfortunately have seen consistently from the Child and Family Agency, another concern is that other rights people have under other parts of the GDPR - including for example, rights in terms of information where their legal rights might be affected - do not effectively disappear because we are told GDPR does not apply in this regard. That is in terms of the wider question of Article 15 being taken as a stand-in for the other sets of rights under the data protection regulations.

I hope the Minister will consider these. I urge him to be cautious in terms of something that will tie his hands in the future when he looks to put in place appropriate legislation and that will in fact remove one of the most important and powerful tools that we have in terms of Article 15 from his deliberations at that time.

Senator Mary Seery Kearney: Within section 3, I see-----

An Leas-Chathaoirleach: I apologise for interrupting the Senator but we will be discussing section 3 later. Senators must speak to the amendment for now.

Senator Mary Seery Kearney: I will speak to the amendment then. I thank you for your precision, a Leas-Chathaoirleach. The amendments relate to the application of data protection legislation. In this section, I see the Minister having the scope and the power to have further legislation that provides for many of the concerns he has taken on board in the process of this debate and with the Attorney General's advice.

It has been said twice that this is technical and it is about the database. That has been quoted or said without the context of all of the other things that I have said. I am more than aware of the much wider and hurtful context, as well as the real people I have engaged with. I do not want to reduce it and I am not in any way attempting to do so. This is about a database which the Minister has said will actually assist Tusla in its role of assisting people with tracing.

The reason this legislation has to occur and has to be put in place is to preserve that information and to make it available to Tusla to assist in tracing. While I have reservations about Tusla, I believe the Minister will move quickly then thereafter to rectify or put an overarching system in place that is of greater assistance than we currently have. Within the data protection elements of this section, I do not see anything that is prohibiting this.

We cannot take this database away from the wider context that is how all of the rest of the resulting information and the collection of records of the commission has come about. We cannot separate it and treat it differently. We need to treat the whole thing in the same place. If there are matters that need to be rectified afterwards in more thoughtful legislation that can somehow go back on the past, can somehow look at the appropriateness of 30 years and how people get to put their story with their name on the record, if that is what they choose, or keep it out, if that is that they choose, then we can do that. Nothing here, however, prevents that from happening.

Deputy Roderic O’Gorman: Unfortunately, I will not be in a position to accept this group of amendments, following engagement with the Attorney General and officials in my office. Much of that is the result of the core consequence of this commission of inquiry being based on the 2004 legislation.

With regard to Senator Bacik’s amendment, section 3(1) specifically outlines what is lawful for the agency to possess and the relevant current statute under which it might do so. Based on my engagement with the Attorney General, it is understood that the provisions contained in this amendment are not possible.

Turning to the amendments which propose to alter the application of data protection law to the archive transferring from the commission to me as the prescribed Minister, the 2004 Act provides for the mechanism for the depositing of documents with the Minister. This is not provided for in this Bill. I am advised again by the Attorney General that right to access to personal data in Article 15 is expressly restricted by section 35 of the Commissions of Investigation Act 2004. The 2004 Act does so in accordance with Article 23 of the GDPR by expressly stating that the restrictions justified as it is necessary and proportionate to safeguard the effective operation of commissions and the future co-operation of witnesses.

The prohibition under section 39 of the 2004 Act does not have the application to the records which will transfer to Tusla as those records are not within the categories listed in this provision. For the avoidance of any doubt, it is important to clarify that the commission is not in possession of original departmental records and no original records will be sealed by the arrangements of the 2004 Act. State records remain in the possession of the relevant statutory bodies and appropriate access is regulated in accordance with the relevant statute.

When it was decided to establish an inquiry into mother and baby homes, the model of investigation the then Government chose was a commission of investigation under the 2004 Act. That decision by that Government and the subsequent establishment under that law of this commission had indelible consequences for the format of the investigation that was to be conducted, for the mode of engagement with the commission, by third parties who gave evidence, for the rights of those third parties, with the commission’s report and for its records. The entire premise of the 2004 Act is that investigations are held in private, that confidentiality applies seamlessly to the evidence and records gathered by the inquiry, both during the lifetime of the commission itself and after its dissolution when records have been deposited with the Minister.

The 2004 Act provides for the means whereby the archive and the confidentiality of that archive are preserved. Any disclosure by a Department of the records deposited with it is prohibited by law and would be an offence. This is what is provided for in the original 2004 Act, not what is provided for in this legislation. Unfortunately, I am not in a position to accept these particular amendments.

Senator Ivana Bacik: I thank the Minister for his response. It is disappointing to hear that he is not prepared to accept any of the amendments given how crucial this core principle is. Again, he referred to the 2004 Act. That is not set in stone and we can amend it. The whole purpose of this Bill, as the Minister said, is to disapply it in a particular way to enable the database to be sent to Tusla. Clearly, we can disapply it, amend it or make exceptions to the general rule that applies only to this particular commission. We do not have to amend it so that it applies to all commissions. It is disappointing, particularly as amendment No. 12 was drafted as a simple amendment to show how it could be disappplied and one could carve out an exception to

the 2004 Act provision. We would have been quite happy to work with others to improve upon it, ensure it enabled people to access identity information and to meet the needs of ensuring the preservation of an archive. I will be pressing the amendment.

The tireless work of Catherine Corless in Tuam and the interim reports which the commission has already published have given us a large amount of information. They have also disclosed, however, the scale of the distress involved. Senator Higgins spoke about the Bessborough home in Cork. I referred to that on Second Stage because the fifth interim report of the commission which focused on the Bessborough mother and baby home had chilling revelations that out of 900 children who died between 1922 and 1998 there, only 64 burials were accounted for. I quoted that awful finding the commission made that it is not known where the majority of children who died at Bessborough are buried.

These appalling findings illustrate the dearth of information available to survivors and their relatives, descendants or, as Senator Higgins said, in some cases to mothers who may be still alive and do not know where their babies are buried. This is the sort of information we are talking about.

I accept the Minister's commitment to producing information and tracing legislation. We are back to the drawing board on that one, however, given that the Bill brought forward by the previous Minister, Katherine Zappone, fell in June 2019 on Committee Stage in the Seanad. We had spent many hours debating it by that time. I do not know whether the Minister can - I would like him to - give us a realistic timeframe for giving people a way of accessing the identity information. That might give people some comfort in the absence of any move by the Government to take any of these amendments on board. This is an important principle. It goes to the core of what we say is lacking in the Bill. I will be pressing the amendment, but I would ask the Minister for some idea as to when that information and tracing legislation will be effective so that people can access this important information.

Senator Lynn Ruane: I need to respond to the Minister because I will be pressing my amendment. It is disappointing the way the sections are being so narrowly considered. The entire premise of the 2004 Act is not secrecy. Section 198 of the Data Protection Act 2018 makes clear that the right of subject access is only restricted in so far as is necessary and proportionate in order to help a commission to operate effectively. It does not apply on a blanket basis. The 2004 Act afforded discretion to a commission to give people the documents they needed as a witness, which it did not do. On that basis, and I suppose on the basis that the Minister is not willing to consider the amendments, I will be pushing the point in the context of Senator Bacik's amendment. I will also be pressing the amendment in my name.

Senator Alice-Mary Higgins: I am disappointed. With great respect, the 2004 Act is not set in stone. We amend and change laws all the time. Of course, there is a concern if there are people whose rights are affected because we have changed a law. The Minister may speak of the rights of those who participated. However, there is sufficient measure already, even within Article 15 of the GDPR, to protect the rights of those who participated. Article 15 states: "The right to obtain a copy referred to in paragraph 3 [the right of providing a copy of personal data] shall not adversely affect the rights and freedoms of others." The latter means that there is already in place a measure which ensures that if there is a concern on the part of anybody who participated in the commission that his or her rights might be affected. I do not see how inhibiting Article 15, or seeming to do so - especially when the Minister described them as almost being more concerned - because, at present, the position is only constrained under section 39 of

the 2004 Act, which was only inserted into it two years ago. The Act was changed two years ago in an explicit attempt to narrow the position and remove rights under Article 15 because the GDPR rights took precedence over the original constraints. The 2004 Act was amended in 2018 by means of section 198 of the Data Protection Act, whereby there was an explicit decision to have it stated that Article 15 would be constrained only “to the extent necessary and proportionate to safeguard the effective operation of commissions and the future cooperation of witnesses”.

Amendments Nos. 24 and 26 in the names of Senators Bacik and Ruane simply seek to clarify that Article 15 applies. However, it should be clearly stated on the record that it applies and that the exclusions the Minister has put in with regard to section 198 of the 2018 Act are not helpful and should be removed. If the Minister does not remove them, he will have a battle of interpretation because I guarantee that someone will say that the decision to withhold from someone information regarding where that person’s child is buried is not necessary or proportionate in the context of the operation of future commissions. The Minister is opening himself up to a suite of litigation. Of course, there will be those who will not be able to litigate and they will simply suffer as a result of the impact of a poorly designed tool. If the Minister cannot accept either amendment Nos. 24 or amendment No. 26, he needs to know that the Senators asked him to clarify that issue in the context of both of those amendments. I regard refusing information to persons in respect of a deceased family member as already being illegal and out of line with Article 15 - even under the interpretation adopted by means of section 198 of the 2018 Act - but I would regard it as an unnecessary cruelty to fail to give people that clarity and to suggest, in the context of the records, that it somehow cannot be done.

Amendment put:

The Committee divided: Tá, 9; Níl, 25.	
Tá	Níl
Bacik, Ivana.	Ahearn, Garret.
Black, Frances.	Buttimer, Jerry.
Boyhan, Victor.	Byrne, Malcolm.
Craughwell, Gerard P.	Carrigy, Micheál.
Higgins, Alice-Mary.	Casey, Pat.
Moynihan, Rebecca.	Cassells, Shane.
Ruane, Lynn.	Conway, Martin.
Sherlock, Marie.	Crowe, Ollie.
Wall, Mark.	Currie, Emer.
	Doherty, Regina.
	Dolan, Aisling.
	Fitzpatrick, Mary.
	Gallagher, Robbie.
	Hackett, Pippa.
	Kyne, Seán.
	Lombard, Tim.
	McGahon, John.
	McGreehan, Erin.

16 October 2020

	Murphy, Eugene.
	O'Loughlin, Fiona.
	O'Reilly, Joe.
	O'Reilly, Pauline.
	Seery Kearney, Mary.
	Ward, Barry.
	Wilson, Diarmuid.

Tellers: Tá, Senators Ivana Bacik and Marie Sherlock; Níl, Senators Robbie Gallagher and Seán Kyne.

Amendment declared lost.

7 o'clock

Question, "That section 3 stand part of the Bill", put and declared carried.

NEW SECTIONS

Senator Lynn Ruane: I move amendment No. 13:

In page 4, after line 36, to insert the following:

"4. Notwithstanding the provisions made in this Act, the Minister may make regulations providing for the creation of a data processing agreement between the Agency and the Authority, the National Archive or another public body where it is in the public interest and subject to suitable regulation."

Amendment put and declared lost.

Senator Alice-Mary Higgins: I move amendment No. 14:

In page 4, after line 36, to insert the following:

"4. The Minister may make regulations outlining the mechanisms whereby the documents deposited with him or her under this Act may be processed for the purposes of the Data Protection Regulation."

Amendment put and declared lost.

Senator Alice-Mary Higgins: I move amendment No. 15:

In page 4, after line 36, to insert the following:

"4. Notwithstanding anything in section 41 of the Act of 2004, the Minister may make regulations outlining the mechanisms whereby the documents deposited with him or her under this Act may be processed for the purposes of the Data Protection Regulation."

Amendment put:

The Committee divided: Tá, 12; Níl, 25.	
Tá	Níl
Bacik, Ivana.	Ahearn, Garret.
Black, Frances.	Buttimer, Jerry.
Boyhan, Victor.	Byrne, Malcolm.
Boylan, Lynn.	Carrigy, Micheál.
Craughwell, Gerard P.	Casey, Pat.
Higgins, Alice-Mary.	Cassells, Shane.
McCallion, Elisha.	Conway, Martin.
Moynihan, Rebecca.	Crowe, Ollie.
Ruane, Lynn.	Currie, Emer.
Sherlock, Marie.	Doherty, Regina.
Wall, Mark.	Dolan, Aisling.
Warfield, Fintan.	Fitzpatrick, Mary.
	Gallagher, Robbie.
	Hackett, Pippa.
	Kyne, Seán.
	Lombard, Tim.
	McGahon, John.
	McGreehan, Erin.
	Murphy, Eugene.
	O'Loughlin, Fiona.
	O'Reilly, Joe.
	O'Reilly, Pauline.
	Seery Kearney, Mary.
	Ward, Barry.
	Wilson, Diarmuid.

Tellers: Tá, Senators Alice-Mary Higgins and Lynn Ruane; Níl, Senators Robbie Gallagher and Seán Kyne.

Amendment declared lost.

Senator Alice-Mary Higgins: I move amendment No. 16:

In page 4, after line 36, to insert the following:

“Interpretation of section 39 of Act of 2004

4. Section 39 of the Act of 2004 shall not be interpreted as preventing a person from accessing documents and records of interviews in which they are the subject or statements they themselves provided to a Commission of Investigation.”.

I will be very brief. I had not realised the amendment was grouped-----

An Cathaoirleach: We will wait for the Minister.

16 October 2020

Senator Alice-Mary Higgins: I will speak very briefly on amendment No. 16, as I had not realised it was grouped previously. This amendment follows on from earlier discussions. Essentially, it reminds the Minister that section 39 of the Act of 2004, as amended by section 198 of the Data Protection Act, does not suspend Article 15 rights. They still stand and can only be curtailed as necessary and proportionate in each individual instance. Each time somebody seeks a data subject access request, the Minister must be confident that it is necessary and proportionate for the functioning of future commissions that her or she not get that information in that individual instance. That is why I want the Minister to add a regulation, in order that it is not a blunt tool but a nuanced one.

We mentioned graves, but the issue that concerns me is that not giving people their own testimony or statements should be interpreted as damaging to the operation of future commissions. It will damage the future co-operation of witnesses and it will damage future commissions if those who participated are refused copies of their own testimony. I ask the Minister to interpret section 39 very clearly in that way. I will not press this amendment because, unless the Minister is able to accept it at this time, I do not want to put him in a position of having voted against that interpretation. I really want to engage with him on this matter. It is a fundamental and important interpretation. If the Minister is willing to engage and discuss this further, I would prefer not to put him voting against this on the record. Perhaps it is an issue that can be revisited in the Dáil.

An Cathaoirleach: This amendment has already been discussed during the debate on section 12, so the Minister is free to reply or we can ask the Member her intentions. Is the amendment being pressed?

Senator Alice-Mary Higgins: Will the Minister respond?

An Cathaoirleach: We are reopening the debate. I want to be fair to everybody. The amendment was part of-----

Senator Alice-Mary Higgins: I am only asking the Minister if he intends to discuss it.

An Cathaoirleach: I am not sure there is provision for that in the Standing Orders.

Deputy Roderic O’Gorman: I will be fully honest with the Senator. I do not see at this point that I will be in a position to address this particular matter in the Dáil, as I felt I was addressing-----

Senator Alice-Mary Higgins: It is about the interpretation of the section so it does not necessarily need to be part of the legislation.

Deputy Roderic O’Gorman: It will not be done through legislation at this point.

An Cathaoirleach: I have allowed the Senator latitude-----

Senator Alice-Mary Higgins: I will press the amendment.

Amendment put and declared lost.

SECTION 4

Senator Alice-Mary Higgins: I move amendment No. 17:

In page 5, line 4, to delete “Agency” and substitute “Authority”.

Amendment put and declared lost.

Senator Alice-Mary Higgins: I move amendment No. 18:

In page 5, line 4, after “Agency” to insert “and the Authority”.

Amendment put and declared lost.

An Cathaoirleach: Amendments Nos. 19 and 20 are related and may be discussed together, by agreement. Is that agreed? Agreed.

Senator Alice-Mary Higgins: I move amendment No. 19:

In page 5, between lines 4 and 5, to insert the following:

“(2) The provisions set out in this section shall apply as if the specified Minister were a reference to the Minister and the Agency and the Authority.”

I regret that last amendment. It was unfortunate that the Minister did not agree to it.

Amendments Nos. 19 and 20 are related and both address what I think might be a mistake in the drafting. I am very concerned about the potential implications. This is not something anyone has lobbied me on; it is just a concern I have. Section 4 of the Bill states: “Section 45 of the Act of 2004 shall apply in relation to the database and related records as if the reference, in paragraph (a) of subsection (1), to specified Minister were a reference to the Agency.” I am a little concerned about the reference to the database and related records. This is the problem of splitting and having some of the records with the Minister and some with others. I am concerned. Section 45 of the Act of 2004 relates to the functioning of tribunals on some of the issues that have been looked at in the course of the Mother and Baby Homes Commission. For example, there may be a tribunal in the future regarding the vaccination trials, which is one of the commission’s remits and areas of work. This seems to nail down this section. I would like the Minister and the agency to both be responsible for this.

The issue also relates back to my previous amendments in which I wanted the Minister to have a copy of the database. It would be crucial for the Minister to have a copy of the database and related records. The Minister has indicated that one of the things he will address in the Dáil is ensuring there is one copy of the materials in one location. It is also very important that, in the case of a future tribunal, there would be one place it could go and access all the relevant and necessary documents. I am concerned about this fragmented approach and what it might mean for the efficacy and functioning of a future tribunal. Even in the 2004 Act, which is the Act containing section 45, it is envisaged that a future tribunal may take place to dive into any of the issues that were part of the terms of reference for the original commission. The vaccination trials are key but there are other issues about which there may need to be tribunals, such as forced labour and inappropriate deaths. I ask the Minister to clarify how that will work. If we do end up, as we must, with all the documents in one place, is that where the tribunal will go? Will it have to seek two different locations? There is nothing in section 45 of the Act of 2004 that precludes copies being made. Copies are fine. It is okay to have copies if they are appropriately minded and cared for elsewhere. There is an aversion to duplication which we might need to move past.

Deputy Roderic O’Gorman: I might be able to provide the clarity the Senator wants. In the case of section 45 of the Act of 2004, I am aware that amendments also relate to a concern that an unintended consequence could arise if the amendment precluded the Minister from also transferring the archive to a tribunal, where requested. In this regard we have checked with Parliamentary Counsel and I am satisfied that this unintended consequence does not arise. Section 45 of the Act of 2004 continues to stand in relation to the requirement for the Minister to provide the archive to a tribunal. Section 4 of this Bill does not set that aside but rather supplements it by providing that, in the case of the database and related records, Tusla has the equivalent obligation to provide such material to a tribunal on request.

Senator Mary Seery Kearney: I will not delay. I see this section as merely providing an extension to the agency, insofar as section 45 of the 2004 Act is operative. It just extends the requirement to Tusla as well as the Minister but it does not stop the transfer. I do not see that it has that consequence.

Senator Alice-Mary Higgins: It does not extend things. It is simply that they are happening from two different locations. The section states: “as if the reference, in paragraph (a) of subsection (1), to specified Minister were a reference to the Agency.” That relates to the database and related records and the other documents are with the Minister. It seems there are two interpretations of “the Minister” for the purposes of section 45 of the 2004 Act. There is one section 45 interpretation of “the Minister” in respect of the documents that he has, and a different interpretation in respect of the database and related records.

An Cathaoirleach: It would not preclude the Minister.

Senator Alice-Mary Higgins: No, but it would be a split. My concern is that while the number of documents is the same, there are two different directions in which a future tribunal might go. I want the Minister to have a full and comprehensive set of documents and I would prefer if the tribunal were able to access documents from a single location in an appropriate way.

I appreciate the unintended consequence, which was my initial concern. I realise that is not the issue but my concern about the splitting of responsibilities remains. We have spoken to our concerns about Tusla and the documents. The Minister stated he will speak to Tusla but there has not yet been anything to confirm how those records will be stored. I hope that will be forthcoming in the Dáil. Will the documents be in a single location? I would not want a future tribunal to have to ask Tusla for copies of the records, and for Tusla to reply that it has, in fact, put them with many other relevant records in a number of locations, such as the agency’s sections on children, institutions, health or whatever it is. That is the fear. That is why I liked the idea of a single source with all the records. I accept that an archive is the Minister’s ultimate goal, but for the sake of a tribunal, there should be clarity.

Amendment No. 20 might not be necessary, unless the Minister were to choose to take a dual application, which would allow both for Tusla to be accessed, in cases where a tribunal needed only records that were relevant to Tusla, and for the Minister to respond comprehensively if required. Either amendment, which is more or less the same wording as the other, would do that.

Amendment put and declared lost.

Senator Alice-Mary Higgins: I move amendment No. 20:

In page 5, between lines 4 and 5, to insert the following:

“(2) Section 45 of the Act of 2004 shall have dual application to both the Minister and the Agency.”.

Amendment put and declared lost.

Question, “That section 4 stand part of the Bill”, put and declared carried.

SECTION 5

Amendment No. 21 not moved.

An Cathaoirleach: Amendments Nos. 22 and 36 to 38, inclusive, are related and may be discussed together. Is that agreed? Agreed.

Senator Ivana Bacik: I move amendment No. 22:

In page 5, line 8, to delete “(other than the database and related records)”.

I have moved the amendment on behalf of Labour Party Senators but other colleagues have also signed up to it. It seeks to delete the words “other than the database and related records” from section 5 because the Bill will provide that the database and related records of mothers and children be given entirely to Tusla without the Minister keeping a copy. I am conscious that the Minister indicated, in response to Senator Higgins’s amendments Nos. 8 and 9, that he will take advice from the Attorney General on the issue. I intend, therefore, to withdraw the amendment but I look forward to hearing the Minister’s response to it.

Senator Alice-Mary Higgins: I will support the amendment, which relates to the same purpose as my amendments in the grouping, Nos. 36 to 38, inclusive. They seek to ensure the Minister will not tie his hands by limiting the materials that he might get. My amendments seek to ensure he will not explicitly limit himself in the wording of the Long Title, where it would be unnecessary. If he is to make further changes, he might consider changing the Title to ensure he will not limit what might be accessed. The point of my amendments is almost the same as the point Senator Bacik has made.

Amendment No. 37 also relates to the Title. I ask the Minister to provide clarity that he regards the current Long Title, which refers to “matters connected therewith”, as wide enough in its wording to encompass regulations for appropriate processing and for the making of copies. My concern was that a narrow interpretation of “matters connected therewith” might be implied and, in those circumstances, I was seeking to set out explicitly that the legislation in its final form, whatever that might be when it finishes its journey, could also “provide for appropriate processing of evidence received and documents created by or for said Commission, or copies of the same by bodies designated by the Minister under powers conferred by this Act”.

Senator Fintan Warfield: Sinn Féin has put its name to amendment No. 22 and I wish to add my voice. Under the general data protection regulation, GDPR, and the Commissions of Investigation Act 2004, the Minister can take custody of all records gathered and created by the commission, including all personal data in those archives. Section 43 of the 2004 Act states “all evidence received by and all documents created by or for the commission” shall be depos-

ited with the Minister. Under the GDPR, archiving purposes in the public interest are a lawful ground for processing personal data. I would like to hear a little more about how we can ensure that can be done correctly.

Deputy Roderic O’Gorman: In the comments I made earlier in response to Senator Higgins’s amendments on the issue of a full copy of the database both being in the archive and transferring to Tusla, I indicated I had flagged that with the Attorney General and asked that he work with my Department so that we can bring forward an amendment in the Dáil. I hope that colleagues will accept my bona fides on that proposal.

Amendment No. 37 is a slightly different question. Am I correct in my understanding that Senator Higgins wants me to interpret the Long Title as opening the ability to write regulations under the Bill?

Senator Alice-Mary Higgins: I think the Minister has the powers but I want it to be made more clear. I am not seeking to constrain him. He will have the opportunity to amend the Title, if he so wishes, when he brings the Bill to the Dáil. The Bill, to a large degree, relates to the depositing of documents. I wanted to ensure that in processing, such as through the data processor relationships I had mentioned that might need to be put in place, there would be copies of the documents. If changes are made after discussions with the Attorney General, as the Minister outlined, they will probably be reflected in the Title in any case. I wanted to ensure that when the Minister seeks to amend the Bill in the Dáil, he will not run into problems whereby the Title presents an obstacle to changes he might wish to make. The Long Title is quite specific in how it describes things. I am happy to-----

Deputy Roderic O’Gorman: I trust-----

Senator Alice-Mary Higgins: I cannot pre-empt what the Minister might need to put into the Long Title, according to the amendments he might make.

Deputy Roderic O’Gorman: I trust the Attorney General will give me the necessary advice to make provision for whatever I am doing, as regards ensuring a full set is in the archive. We can make provision for that in the Long Title as well.

Senator Alice-Mary Higgins: That is perfect.

Amendment, by leave, withdrawn.

Section 5 agreed to.

NEW SECTIONS

An Leas-Chathaoirleach: Amendment No. 23 is out of order as it incurs a potential charge on revenue.

Amendment No. 23 not moved.

Senator Ivana Bacik: I move amendment No. 24:

In page 5, between lines 9 and 10, to insert the following:

“Application of the Data Protection Regulation

6. (1) Article 15 of the Data Protection Regulation applies without restriction to the evidence and documents deposited by the Commission with the Minister under subsection (2) of section 43 of the Act of 2004.

(2) In this section, “Data Protection Regulation” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016.”.

Amendment put and declared lost.

An Leas-Chathaoirleach: Amendments Nos. 25 and 27 are related and may be discussed together by agreement. Is that agreed? Agreed.

Senator Ivana Bacik: I move amendment No. 25:

In page 5, between lines 9 and 10, to insert the following:

“Minister to publish an Index to the Commission’s archive

6. (1) Within four weeks of the Commission’s deposit of evidence and records with the Minister under subsection (2) of section 43 of the Act of 2004, the Minister shall lay before both Houses of the Oireachtas an Index to all of the evidence and records so deposited.

(2) The Index to which this section relates shall be anonymised to the extent necessary and proportionate to protect individuals in their private capacity.”.

Amendment No. 25 has the same purpose as amendment No. 27 and was tabled in the names of the Labour Party Senators. I am aware that other colleagues have also tabled the same amendment. We seek to ensure that an anonymised index would be prepared for the database and the archive. That is patently essential to make sense of it, to ensure that people know what it is in it and to give comfort to the many survivors who hope to be able to access their own information or information relating to family members in the future. I will not say more on it because I am conscious that the Minister gave a reply earlier to a question asked by a colleague, which indicated that an index would indeed be prepared for the archives.

I do not know if the Minister responded earlier to my question about a timeline for the information and tracing legislation being in place. Again, that is very important to provide some context for all of us in debating this Bill. I look forward to hearing the response of the Minister on the preparation of an index and on the timeline for information and tracing legislation.

Senator Fintan Warfield: I wish to put on record our support for a full indexing of the material. It is obvious from the amendment that a body such as Tusla or the Department itself would not be suitable to carry out this task. We need bodies with a proven record in archival upkeep, along with the associated facilities to ensure that the records can be accessed in the future. Many institutions have already handled a wide variety of sensitive material.

Professionally-run archives have been suggested as suitable repositories. Have the Minister’s officials ever approached the National Archives or the National Library of Ireland with a view to maintaining the records? Last month, in a reply to a parliamentary question, the Minister referred to the legislation as it was being prepared by stating, “I sought Government approval for the urgent drafting of legislation to provide a bespoke solution to this issue”. I do not consider this haphazard or rushed arrangement to be bespoke, whereas the amendment offers

time and scope to consider options other than what is proposed in the Bill as initiated.

Senator Lynn Ruane: Amendments Nos. 25 and 27 relate to the contents of the records being deposited with the Minister under this Act. An index that was appropriately anonymised would be vital in ensuring that the records could be used appropriately for memorialisation and truth-telling purposes.

It would also be important as a sign to survivors that light will eventually be shed on the records proposed to be sealed under this Bill. As the Minister is aware, we are here because the commission will shortly be delivering its report to him at the end of the month. This report is being expected with both trepidation and impatience by the survivors involved.

I understand that there may be an issue with the publication of the report to the public and therefore there may be a delay between the Minister receiving the report and survivors being given the opportunity to read it. This would be despite the many delays and interim reports arising out of the commission's work to date. It is vitally important that if the Minister does not intend to publish the commission's report right away, as is the current expectation of survivors, that he would instead set out in detail the process and timeline under which he expects to release it into the public domain.

Coming so soon after the controversy surrounding this Bill and the information and tracing legislation, we need to be as open and transparent as possible with survivors about the process we are engaged in to publish this report. If the Minister cannot share it straight away, he must declare when people may expect it, so as to prevent a vacuum of information on this crucial issue. Can he articulate a timeline on the record at this juncture?

Regarding amendment No. 25, as the Minister will now be fully aware, the process that has been used to move this Bill through the Oireachtas and to investigate the mother and baby homes under the Commissions of Investigation Act 2004 has caused serious trauma and harm to the survivors affected by this issue. A commission of investigation was never the appropriate mechanism by which to explore and investigate sensitive issues relating to historical institutional abuse. The reason it was so ill-suited to investigating the mother and baby homes is exactly why there has been so much controversy this week; it is because section 11 of that Act requires records collected in the course of the commission's work to be kept confidential.

While such an approach may be appropriate for less sensitive matters on which commissions have investigated in the past, such as Siteserv, it is categorically wrong to make such a requirement where these records are also an integral part of the identity of the people to whom they relate. People have a human right to their own history and identity and to access information relating to it; this right is being denied to them by the Commissions of Investigation Act and the decision to investigate the mother and baby homes with an order made under it.

It is too late to go back and choose a different investigation under a different legislative instrument for the mother and baby homes. We raised our concerns about the decision back in 2017 but it was done. We now must learn from the mistakes we have made and ensure that a similar investigation on such a sensitive issue never happens again under the 2004 Act. It is with the intention of learning from these current problems that I have tabled amendment No. 25. It would require the Minister to review the statutory instrument that set up the mother and baby homes commission. That review would consider whether such a statutory instrument was an appropriate way to investigate the sensitive matters within its remit and whether the Act of

2004 is fit for this purpose. The Minister would then deliver a report on recommendations for proposed legislation on how these issues could be better investigated in the future, drawing on international best practice and in consultation with those affected. We need something new and different, so confidentiality is not cited with such significant and traumatic effects on survivors as a reason to deny them access to their records.

It is a sad reality that the mother and baby homes may not be the last time we have to investigate such a matter, as other issues may come to light in future. As we have demonstrated that the Commissions of Investigation Act does not have within it the appropriate sensitivity and nuance to deal with these issues, we need a new Act that satisfies international human rights law and the rights of survivors to their own information and records.

With amendment No. 25, I ask the Minister to start this work and to bring proposals for reform. I realise that I neglected to set a time limit on this report, which I would do if I had an opportunity to submit a Report Stage amendment but that chance has unfortunately been denied. I would envisage this report to be delivered to the Oireachtas within 12 months. Given everything that has gone on this week, I think it is an entirely fair request to make under the circumstances.

I wish to make a brief point on an index. There is some concern among historians about what the documents may cover and the format they may take. I know Ms Catriona Crowe is keen to speak to the Minister, as are historians and archivists who were not consulted. If the archive is sealed, they will need all the details necessary to locate original documents. An index is important, but many historians are worried about how it will be reported and compiled.

Senator Alice-Mary Higgins: I support both of these amendments. The Minister indicated earlier that a form of index is available, but there are a few crucial questions in that regard. This is one of the fundamental asks. We know there are thousands of documents of extraordinarily diverse nature. It is important that we know exactly what we are dealing with so that we know the appropriate way to deal with these documents. It is important that there should be a single index. For the same reasons that we wanted a single repository, there must be a single index outlining exactly what the commission has passed on. I have mentioned the fear of slippage of some of the relevant records. There must be an index of everything the commission has handled, but not only that; there must also be a subsidiary index outlining exactly which records have gone to the Child and Family Agency. The overall index is crucial for posterity, and for the appropriate repository which I hope will one day be constructed in consultation with those most directly affected.

In the interim, it is also very important that we would have a clear index of exactly which records lie with Tusla. That includes that agency's own records and those of other bodies. That index of records should be available to the Adoption Authority of Ireland and other organisations that might need to access the files. The index should be accessible so that people seeking access or information to exercise their legitimate rights under the GDPR can know where information might be found. I would like to underscore for the Minister that there can be no such thing as blanket refusal of rights under Article 15 of the GDPR. Every individual instance must be weighed up and deemed necessary and proportionate. Both the Minister and the body concerned will be dealing with subject access requests.

I have a related concern with regard to section 3(2). It relates directly to the question of the index, how it might be constituted and one reason it might be important to have an anonymised

index. Under the section, when the agency is examining documents for a legitimate purpose such as maintaining the database, keeping records, managing information and so forth, it is restricted from effecting access or causing or requiring any person to effect access to personal data. I am concerned that this may inadvertently prevent certain documents being processed or records being recognised. A subject access request is a different matter, but an anonymised index would be useful for compliance purposes in cases where a suite of issues must be addressed or a maintenance issue arises.

I would like to offer a final reminder with regard to amendments Nos. 25 and 27. I know I keep going back to this issue and I know that the Adoption Authority of Ireland is not getting the files for now. This is not a new suggestion originating in this House. It was always envisaged. I know the commission has its own index, but I remind the Minister again that the 2017 legislation envisaged an index of all of the records and a searchable electronic database.

Senator Mary Seery Kearney: The Minister has referenced the index. I support an index. As he is receptive to that, I invite him to take on board these legitimate and supportive comments.

With regard to the review, I 100% support what Senator Ruane is saying but I am opposed to the amendment. No matter how broad and thorough it is, it may inadvertently fetter the scope of a review. We need to look again. Our society has changed since 2004 and 2015. Covid-19 has changed how we think about everything, including domestic violence. It has changed the parameters of what we can talk about. We do not yet know what the final report will look like. I am heartened by the interim reports indicating that the final report will be extensive and thorough. Conducting a review will be necessary, but we must not fetter the review. It is important that we reflect on it. We must have some checking mechanism to ensure that the legislation and any statutory instrument flowing from it is appropriate to a culture that is equal and respectful. The charge of paternalism must not be laid against it. The Minister is very capable of bringing that forward compassionately, sensitively and with due regard to the required balancing of rights.

Deputy Roderic O’Gorman: I will speak to amendments Nos. 25 and 27 first. I understand the desire and need for an index of the evidence and the records. This has been considered as part of the commission’s investigation. We contacted the commission and asked for clarification of what it is doing. An index is referred to in its terms of reference. As part of its final report, the commission has compiled a complete listing of all the sources used in completing its report. This listing is more than 80 pages long and will form part of its final report. I understand that the listing will indicate whether sources are published or unpublished and whether they are part of the archive that will pass to the Minister or part of the suite of records passing to Tusla. This comprehensive 80-page listing of source material will be published and available for all to view. I hope that meets Members’ requirements. I did not push for anything more because I think that sounds extremely detailed. It will come out with the report. It will not be in the sealed archive. It will be published and available. Can I speak to amendment No. 28 as well?

An Leas-Chathaoirleach: We will take that separately.

Deputy Roderic O’Gorman: I have not yet responded to Senator Bacik’s queries. Senator Warfield asked about the timeline for receipt of the commission’s report. I cannot give a timeline until we get it. Several procedural requirements under section 38 of the Commissions of Investigation Act 2004 must be met. The Office of the Attorney General must go through the

report, as will my Department. There is an option to refer to the Garda Commissioner if necessary. It will then be brought to the Government, which will agree on publication.

8 o'clock

For my part, having had so many contacts since I took up this role from people who are waiting to hear this and concerned about the delays we discussed earlier, I want it published as quickly as possible. That is really all I can give the Senators today. Survivors have waited such a long time for this that they deserve that clarity. I want to put it out there as quickly as possible.

That feeds into the body of work my Department has to do as regards legacy issues. We have to get this published and start responding to it because I imagine it will contain significant recommendations. We have work to do on the burial sites legislation as well and, as Senator Bacik stated, we have work to do on the information and tracing legislation. The Senator asked when people will be able to avail of that. Unfortunately, I cannot give an answer. It is my intention that we will, hopefully, bring forward the information and tracing legislation next year. As already stated, I am open to engaging with the many Senators who have a real interest in and knowledge of this issue.

Amendment put and declared lost.

Senator Lynn Ruane: I move amendment No. 26:

In page 5, between lines 9 and 10, to insert the following:

“Application of the Data Protection Regulation

6. (1) For the avoidance of doubt, Article 15 of the Data Protection Regulation applies without restriction to the evidence and documents deposited by the Commission with the Minister under subsection (2) of section 43 of the Act of 2004.

(2) In this section, “Data Protection Regulation” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016.”.

Amendment put and declared lost.

Senator Lynn Ruane: I move amendment No. 27:

In page 5, between lines 9 and 10, to insert the following:

“Minister to publish an Index to the Commission’s archive

6. (1) Within 30 days of the Commission’s deposit of evidence and records with the Minister under subsection (2) of section 43 of the Act of 2004, the Minister shall lay before each House of the Oireachtas an Index to all of the evidence and records so deposited.

(2) The Index to which this section relates shall be anonymised to the extent necessary and proportionate to protect individuals in their private capacity. ”.

Amendment put and declared lost.

SECTION 6

Question proposed: “That section 6 stand part of the Bill.”

Senator Ivana Bacik: We have discussed the amendments at length but we have not talked about the section at all. This is the rogue section, one might say, the section on the other, unrelated matter of amending the Judicial Council Act 2019 essentially to extend the deadline for preparation of the draft personal injuries guidelines. I have no objection to the extension. I have seen the letter from the President of the High Court, Ms Justice Mary Irvine, setting out the grounds for seeking the extension. All of us want to see these guidelines published and we accept that a little more time is needed to ensure they are carried out adequately. I have no difficulty with the substance of the section. Rather, I want to put on record my dissatisfaction at the way in which this utterly unrelated amendment is being made and the way it was put in at the last minute on such a contentious and sensitive Bill dealing with such a complex matter, namely, the commission of investigation records.

It is bad legislative practice to have an amendment that is entirely unrelated and from a different Department, given that, as I understand the matter, it was the Minister for Justice who sought to put forward this amendment. As I said, it arrived very late and it is inappropriate to see it being tagged on in this way. I simply want to register my disapproval of this practice. I am sure the Minister is not particularly happy about it. All of us who have been legal academics or practising lawyers at various points will be aware it is always unsatisfactory to have provisions that are unrelated tagged on to a compendium or kitchen-sink-style Bill. This is not good practice because it makes it difficult for people coming later to uncover what is the law in a particular area. It is lazy legislation. I want to put that out there on the record, although I have no difficulty with the substance of the section.

Senator Gerard P. Craughwell: Senator Bacik has said practically everything I wanted to say. It smacks of laziness, of inappropriateness and of precisely what is going on here today, namely, the rushing of legislation through the House. Somebody somewhere notices something that needs to be done, and we stick it into one of the most contentious Bills that has come to this House in my six years here. It is completely inappropriate when we think about the people we have been referring to all day, irrespective of which side of the mother and baby homes issue one is on.

I am sorry to give the Minister a bit of a lashing for it because I am sure he was asked to do this because of the urgency involved. However, it breaks my heart when I think of the women and children who are watching this today only to see something about personal injuries stuck in the middle of the Bill. The greatest injury of all was done to the mothers we are talking about and many of their children in the mother and baby homes, yet we stick this in the middle of the Bill. It is sloppy and I am sorry to see it there.

I do not hold the Minister responsible. However, I would ask him to take the matter back to Cabinet and say that this is not the way to do business and to ask that they stop lumping one thing on top of another. The Greens seem to be the guys who have got the hammering off us for the past couple of weeks in respect of various items of legislation, which is not fair. I have said enough, but this is highly inappropriate.

Senator Alice-Mary Higgins: I want to make the same point. First, there is a general concern about bad practice, and that bad practice is more of a concern today because the main subject matter of the Bill is so sensitive and is a matter of such huge concern. However, there is also a concern that we do not go down the route taken in the United States where there is legislation that amalgamates school meals and gun law, for example, and everything else gets thrown in together. This can create a fractious and inappropriate dynamic whereby, in future, there may

be tensions between two elements in a Bill, with something people want and something people do not want, and issues that matter to people are held hostage to other issues. It is a careless approach at this point and that kind of parliamentary practice can become a bad and dangerous down the line. We have to take it seriously, mark it and note it.

Normally, when there is an amendment to an Act, be it the Social Welfare Act or the Judicial Council Act, there would be a proviso for other amendments and allowance for others who wish to amend the Act. For example, my colleagues in Sinn Féin have previously put forward constructive suggestions in regard to the operation of the Judicial Council. This section merits its own consideration. The thing the Government wants to do to the Judicial Council Act is one part of the puzzle but, normally, if this was being done properly, this section would be dealt with in separate legislation on the Judicial Council, it would move through in the normal way and constructive suggestions in regard to the operation of the Judicial Council could be attached to that, as appropriate. That has not really been possible today.

Of course, the timeline for this is December, not October, which the Minister has stated his timeline to be, and we believe still that it should be November. I want to add my concerns to those already expressed.

Senator Lynn Boylan: It is important that I put on record that the Sinn Féin Senators are deeply uncomfortable with section 6 being shoehorned into such a sensitive Bill. There are two points. First, it is bad practice and reflective of the chaotic nature of the current Government. We have seen this in the context of special advisers and vulture funds but particularly here where we are putting the issue of a judge not fulfilling their duties by a timeline into a Bill that is focused on survivors getting information on their life testimonies. There is something deeply distasteful about that. I do not blame the Minister. The Minister has been sent in here to do the dirty work of the Minister for justice who did put it in here. It needs to be marked on the record that it is bad practice but it is really distasteful to shoehorn it into the mother and baby homes Bill.

Question put:

The Committee divided: Tá, 23; Níl, 13.	
Tá	Níl
Ahearn, Garret.	Bacik, Ivana.
Buttimer, Jerry.	Black, Frances.
Byrne, Malcolm.	Boyhan, Victor.
Carrigy, Micheál.	Boylan, Lynn.
Casey, Pat.	Craughwell, Gerard P.
Cassells, Shane.	Gavan, Paul.
Conway, Martin.	Hoey, Annie.
Crowe, Ollie.	McCallion, Elisha.
Currie, Emer.	Moynihan, Rebecca.
Doherty, Regina.	Ruane, Lynn.
Dolan, Aisling.	Sherlock, Marie.
Gallagher, Robbie.	Wall, Mark.
Hackett, Pippa.	Warfield, Fintan.

Kyne, Seán.	
Lombard, Tim.	
McGahon, John.	
McGreehan, Erin.	
Murphy, Eugene.	
O'Loughlin, Fiona.	
O'Reilly, Joe.	
O'Reilly, Pauline.	
Seery Kearney, Mary.	
Ward, Barry.	

Tellers: Tá, Senators Robbie Gallagher and Seán Kyne; Níl, Senators Gerard P. Craughwell and Ivana Bacik.

Question declared carried.

NEW SECTION

Senator Lynn Ruane: I move amendment No. 28:

In page 5, between lines 31 and 32, to insert the following:

“Legislative Review

7. (1) The Minister shall conduct a review of the Commission of Investigation (Mother and Baby Homes and certain related Matters) Order 2015 (S.I. No. 57 of 2015).

(2) In conducting the review under *subsection (1)*, the Minister shall consider the degree to which the Act of 2004 and orders made thereunder are the appropriate legislative instrument by which to investigate matters such as those listed in the Schedule to the Order of 2015.

(3) The Minister shall make a report to each House of the Oireachtas of the findings made of the review under *subsection (1)* and of the conclusions drawn from the findings.

(4) The report made under *subsection (3)* shall make recommendations on new legislative models for how future investigations of such nature should be conducted, drawing on international best practice and in consultation with those directly affected.”.

I accidentally spoke to my amendment with the last grouping but nobody else got to comment. Perhaps Senator Higgins wishes to speak to my amendment.

An Leas-Chathaoirleach: I appreciate the Senator for saying that. Does Senator Higgins want to make a contribution?

Senator Alice-Mary Higgins: I support the amendment and the idea of a legislative review as it would be appropriate. From the first part of our discussions today the Minister will have heard the concerns and context for the creation of the 2004 Act. It came from a situation where there were legitimate concerns about the former mechanisms. Equally true is the fact that the

world has moved on substantially since 2004. The GDPR has been mentioned extensively from which there are data protection and other rights. The rights of the child are also fundamental. Again, it is that question of was this appropriate because this was not an inquiry simply into the operations or functions, be it Siteserv or others. It was an investigation that had a large number of very vulnerable people who were affected. So there are questions about whether that was appropriate and people do not believe that it was the appropriate tool.

Equally, it is important that we look to what tools are appropriate, moving forward, because there are other issues. We know that there are scandals and direct provision is one that springs to mind. There are other issues where we will see future investigations, unfortunately. That is something we know we are going to face as a State. Therefore, it is important that we learn from this to put in place proper principles of redress. We know, as Senator Bacik stated, the damage done by the redress board where people had to sign gagging orders. We know the problems with waivers. We need to learn from each of these issues and moments of institutional violence the tools that we used to handle them. The mistakes that were made need to be honestly addressed so that we can face other issues of collective responsibility and justice into the future. Again, a legislative review would be extremely important, crucially in terms of the mother and baby homes in looking backwards but also to ensure that we learn from that.

Let me outline a very interesting point in the discussion earlier whereby the 2004 interpretation overruled even the orders made in 2015. The interpretation by the committee was clearly the more conservative interpretation, in respect of privacy, from the 2004 Act rather than the quite wide mandate in terms of the right that privacy should be the exception that is invoked, which was in the 2015 order. That just speaks to the problem of having legislation that has not evolved. So, rather than weakening our current legislation as we, unfortunately, see in this Bill, because of a 2004 Act, let us try to improve the tools of the past and adapt them for the future.

Deputy Roderic O’Gorman: I hear where Senators are coming from. Probably our earlier debate on amendment No. 2 and the discussion about the appropriateness, or otherwise, of the confidential committee and the rules around that reveal the shortcomings - and “shortcomings” is far too light a phrase to use - of using the commission of investigation model to examine an issue of such great impact on so many people and took place over such a longer period of time. I mean no disrespect to the three commissioners who have worked incredibly hard. Nevertheless, the institutional straitjacket they were in limited their ability to shape what they were doing to the circumstances of the people they were seeking to assist by undertaking this investigation. In responding to the commission and in undertaking the work on the other major laws we have spoken about, the Department has a significant body of work to do. I would prefer, therefore, that something like this would not just be the responsibility of my Department. It is a whole-of-government issue because we have to learn from other schemes that were put in place such as the redress scheme and we must examine what has been done elsewhere. A collective Government approach is needed. I am worried by suggestions that this issue is just for my Department. As the Senator said, there may be issues we have to examine in the future. This is overly restrictive and I do not accept the amendment, though I take the point. In our response to the recommendations from the commission, in particular, if and when we need to address matters of this degree of sensitivity again, we have to learn how we will do that.

Senator Lynn Ruane: I understand what the Minister is saying about collective responsibility and how these investigations can fall under other Departments. However, while we wait on other people to do something, that often means things do not get done. We have seen the outcry on this. Every review or legislative process has to have leadership and a beginning. My

16 October 2020

experience of trying to deal with child maintenance in here for the past five years is a prime example of one Department saying it is not its responsibility but the responsibility of another Department. It goes back and forth between Departments and nobody takes responsibility. This is a moment for a Department that has been in the thick of the conversation on this and will be in the coming weeks to say that while this is something that needs to be dealt with collectively, somebody also needs to take responsibility for it to lead that action and then work across Departments to make sure change takes place. Somebody needs to take this into their hands and go with it. Unfortunately for the Minister, he is the one who has to come out first on it. He should take the responsibility to lead on the review.

Amendment put:

The Committee divided: Tá, 14; Níl, 23.	
Tá	Níl
Bacik, Ivana.	Ahearn, Garret.
Black, Frances.	Buttimer, Jerry.
Boyhan, Victor.	Byrne, Malcolm.
Boylan, Lynn.	Carrigy, Micheál.
Craughwell, Gerard P.	Casey, Pat.
Gavan, Paul.	Cassells, Shane.
Higgins, Alice-Mary.	Conway, Martin.
Hoey, Annie.	Crowe, Ollie.
McCallion, Elisha.	Currie, Emer.
Moynihan, Rebecca.	Doherty, Regina.
Ruane, Lynn.	Dolan, Aisling.
Sherlock, Marie.	Gallagher, Robbie.
Wall, Mark.	Hackett, Pippa.
Warfield, Fintan.	Kyne, Seán.
	Lombard, Tim.
	McGahon, John.
	McGreehan, Erin.
	Murphy, Eugene.
	O'Loughlin, Fiona.
	O'Reilly, Joe.
	O'Reilly, Pauline.
	Seery Kearney, Mary.
	Ward, Barry.

Tellers: Tá, Senators Alice-Mary Higgins and Lynn Ruane; Níl, Senators Robbie Gallagher and Seán Kyne.

Amendment declared lost.

Section 7 agreed to.

NEW SECTIONS

An Leas-Chathaoirleach: Amendment No. 29 is out of order as it is not relevant to the subject matter of the Bill.

Amendment No. 29 not moved.

Senator Alice-Mary Higgins: I move amendment No. 30:

In page 5, between lines 35 and 36, to insert the following:

“8. The Minister, within 8 months of the passing of this Act, shall publish legislation on the right to information in respect of Mother and Baby Homes, including measures to support access to information on birth, early life, health or family death.”.

I want to speak to the wider theme being addressed here. This is one of a suite of amendments that includes amendment No. 29 and amendments Nos. 31 to 34, inclusive.

Unfortunately, amendments 29 and 31 to 34, inclusive, were ruled out of order. Given the discussion that we have had today around a route to the right to information and access to birth and early life information and that so much of the Minister’s own address, response and contextualisation of this Bill has been that this is part of a suite of measures, my amendments, for example, Nos. 34 and 33, simply try to suggest that within six months or 12 months of the passing of the Act, the Minister would lay a report before the Houses of the Oireachtas outlining progress on the development of policy and legislative proposals to support information and tracing. Unfortunately, those amendments were ruled out of order. Nothing is, frankly, more relevant to the subject matter of this Bill than the question of whether this is a first step towards proper information and tracing legislation. It is as a first step, as an arrow to the future and to next steps, that I had sought to bring in these amendments. They would be very useful and I urge the Minister, although he may not be able to accept them in this context because they have been ruled out of order, nonetheless to consider including such a specific, hard and firm commitment to the next steps forward within this legislation. It would give many more assurances than simply the words of a Minister or even of the Government saying that they are concerned and plan to move forward. This sets a timeline.

My amendment No. 30 is the only one of my remaining timeline amendments which is considered within the remit of this Bill. I urge the Minister to consider accepting it.

An Leas-Chathaoirleach: With great respect, Senator, can we stay to amendment No. 28, please?

Senator Alice-Mary Higgins: I believe we are on amendment No. 30, a Leas-Chathaoirleach. Amendment No. 30 asks that the Minister, within eight months of the passing of this Act, would publish legislation on the right to information in respect of mother and baby homes, including measures to support access to information on birth, early life, health or family death. Others have spoken very eloquently on this issue of family death. Again, it is asking that the Minister would publish legislation. That could take the form of full new legislation or could indeed take the form of statutory instruments, if that is what the Minister would choose to use. It is important that he sends a signal of the next step and that he sets a clock moving on the next steps forward.

This is a special amendment in another way in that it is possibly the Minister’s last op-

portunity to accept an amendment to this Bill in the Seanad. I hope he will consider accepting amendment No. 30, even if the timeline of eight months is perhaps something he may find too restrictive, because he would have the prerogative of extending that period through his own amendment in the Dáil. Either way, I ask the Minister to accept the amendment No. 30 or to indicate and commit to us that he will put in place a timeline for the next steps to ensure that we move towards a national archive developed in consultation with the persons most directly affected and that we put in place a timeline towards proper legislative steps for information and tracing. It is appropriate in a Bill such as this - I accept that it only deals with certain things - to put an arrow towards the next legislation. That has often been done in legislation and it ensures that in what the Minister has asked us to do, which is to accept his bona fides and regard this as one piece in a puzzle, he has indicated to us what the next pieces will be and when they will happen.

Senator Ivana Bacik: We are discussing amendment No. 30. I support Senator Higgins's amendment, which is crucial because it relates to the issue of rights of information, which is something that we have spoken about throughout this debate. It also relates to the question that I asked the Minister earlier about giving us a timeline for the publication of the information and tracing legislation which he promised and which would give comfort to so many people who have contacted us and whose stories have been so sad to hear. Senator Higgins is proposing to give a timeline for the publication of legislation on the right to information in respect of mother and baby homes. The Minister said earlier, in response to my question, that he hopes to produce information and tracing legislation next year. I know that we will all work constructively with the Minister to try to ensure that that legislation comes through not just for mother and baby home survivors but for all those who are seeking the sort of birth or identity information that is so important to so many. I support this amendment but this is also about a bigger issue, which is the publication of that broader legislation that has been so long awaited and is overdue.

Senator Mary Seery Kearney: I completely agree with the sentiment of the amendment. There are broader issues, however, and there are other Departments that need to have a say in this as well. It is a bigger matter than merely, with due respect, the Minister's own Department. Fettering the legislation with a time, albeit that it could be amended or extended, is unhelpful, perhaps, although I accept that the Minister has already said that he is planning on bringing this forward within the next year.

Senator Pauline O'Reilly: I also agree with the sentiment of the amendment. As the Minister said in his earlier contribution, he intends to bring something forward next year. What we have seen through the previous Dáil and Seanad is how difficult it is to progress this legislation. The legislation before us is a step in the right direction but a lot of stakeholder engagement needs to happen from this point onwards. I ask that the Minister at his earliest possible convenience would engage with stakeholders. I have been contacted by Tuam Mother and Baby Home Alliance and it is anxious to engage and to be very much involved from the outset.

I also thank the Minister for taking on board so many of the views over recent days. I spoke on Wednesday about that balancing of rights and he has taken that on board and will come back with an amendment. I have also been in contact with his office in recent days on the index, as have a number of other Senators, and he has responded by giving us an assurance on that index and I also thank him for that. However, I do not think that it can happen within eight months when we are looking at that level of stakeholder engagement and the complexity of the issue.

Deputy Roderic O'Gorman: Like the other speakers, I take on board the sentiment of

what Senator Higgins has been saying. We have spoken about an arrow to a future direction and I have provided plenty of arrows in my contributions today and earlier in the week. I would like not to be fettered by the sort of time period mentioned because it is very tight. I would also like not to be fettered in respect of mother and baby homes because, as Senator Bacik has said, the issue of the need for information and tracing is essential for those in mother and baby homes, but it is also a wider issue, which everybody in the House knows. I have been very clear about my prioritisation of the legacy issues that my Department has to deal with. There are a range of them and the broad information and tracing legislation is absolutely key within that.

Senator Alice-Mary Higgins: I understand that. I agree that it is a wider issue. I also understand that the timeframe may need to be wider again. My amendment No. 34, for example, which set a 12-month timeline and dealt with the wider area of information and tracing, might have been something that was more achievable. Although I cannot put that amendment to the Minister because it is not eligible within the rules of this House, I nonetheless urge him to consider it in the Dáil - again, I have given the Minister the parameters but I have also given him a tool that he can use to press for action - and to consider not simply an arrow that he has indicated through the words he has said in his statements in the House.

9 o'clock

I absolutely accept his bona fides and sincerity in that regard. The previous Minister, Katherine Zappone, was also very sincere on this issue but it was very difficult. That is why I am asking the Minister to embed the next step into this legislation. He will have the prerogative to so do in the Dáil and I hope he will consider putting a marker down. It would give confidence to people if he were to so do.

I echo the comments of Senator Pauline O'Reilly regarding the engagement with stakeholders. Of course, that is important. It is important to state that there is a wide breadth of organisations with an interest in this issue, including groups such as the Tuam mother and baby home survivors, Aontas, the Adoption Rights Alliance, Justice for Magdalenes, the Irish First Mothers group and many others. There is a wide breadth of groups with different experiences and including adoptees, survivors and those who have worked in support of people around specific justice issues or abuse issues within the system. I recognise there is a task of work ahead of the Minister and that he may have a better sense of the timeline in that regard but, even so, I urge him to consider putting in an arrow for at least a report in terms of the timeline such that it will be swiftly achieved. If he does not consider that the next step will be to publish legislation, perhaps the next step should be publishing a report and timeline. That should be achievable within the next year.

Amendment put:

The Committee divided: Tá, 13; Níl, 23.	
Tá	Níl
Bacik, Ivana.	Ahearn, Garret.
Black, Frances.	Buttimer, Jerry.
Boyhan, Victor.	Byrne, Malcolm.
Boylan, Lynn.	Carrigy, Micheál.
Craughwell, Gerard P.	Casey, Pat.
Gavan, Paul.	Cassells, Shane.

Higgins, Alice-Mary.	Conway, Martin.
Hoey, Annie.	Crowe, Ollie.
McCallion, Elisha.	Currie, Emer.
Moynihan, Rebecca.	Doherty, Regina.
Ruane, Lynn.	Dolan, Aisling.
Wall, Mark.	Gallagher, Robbie.
Warfield, Fintan.	Hackett, Pippa.
	Kyne, Seán.
	Lombard, Tim.
	McGahon, John.
	McGreehan, Erin.
	Murphy, Eugene.
	O'Loughlin, Fiona.
	O'Reilly, Joe.
	O'Reilly, Pauline.
	Seery Kearney, Mary.
	Ward, Barry.

Tellers: Tá, Senators Alice-Mary Higgins and Lynn Ruane; Níl, Senators Robbie Gallagher and Seán Kyne.

Amendment declared lost.

An Leas-Chathaoirleach: Amendments Nos. 31 to 34, inclusive, have been deemed out of order as they are not relevant to the subject matter of the Bill.

Amendments Nos. 31 to 34, inclusive, not moved.

Section 8 agreed to.

TITLE

Senator Alice-Mary Higgins: I move amendment No. 35:

In page 3, line 8, after “Agency” to insert “and/or the Adoption Authority of Ireland”.

The amendment is consequential on the success of an earlier amendment. As the earlier amendment was, unfortunately, unsuccessful, I will withdraw amendment No. 35.

Amendment, by leave, withdrawn.

Senator Alice-Mary Higgins: I move amendment No. 36:

In page 3, line 13, to delete “other” where it secondly occurs.

I will withdraw the amendment for the same reason that I withdrew amendment No. 35.

Amendment, by leave, withdrawn.

Senator Alice-Mary Higgins: I move amendment No. 37:

In page 3, line 14, after “investigation;” to insert the following:

“to provide for appropriate processing of evidence received and documents created by or for said Commission, or copies of the same by bodies designated by the Minister under powers conferred by this Act;”.

Amendment, by leave, withdrawn.

Senator Alice-Mary Higgins: I move amendment No. 38:

In page 3, line 14, to delete “other”.

Amendment, by leave, withdrawn.

Title agreed to.

Bill reported without amendment.

An Leas-Chathaoirleach: When is it proposed to take Report Stage?

Senator Mary Seery Kearney: Now.

An Leas-Chathaoirleach: Is that agreed? Agreed.

Bill received for final consideration.

An Leas-Chathaoirleach: When is it proposed to take Fifth Stage?

Senator Mary Seery Kearney: Now.

An Leas-Chathaoirleach: Is that agreed? Agreed.

Question put: “That the Bill do now pass.”

The Seanad divided: Tá, 23; Níl, 14.	
Tá	Níl
Ahearn, Garret.	Bacik, Ivana.
Buttimer, Jerry.	Black, Frances.
Byrne, Malcolm.	Boyhan, Victor.
Carrigy, Micheál.	Boylan, Lynn.
Casey, Pat.	Craughwell, Gerard P.
Cassells, Shane.	Gavan, Paul.
Conway, Martin.	Higgins, Alice-Mary.
Crowe, Ollie.	Hoey, Annie.
Currie, Emer.	McCallion, Elisha.
Doherty, Regina.	Moynihan, Rebecca.
Dolan, Aisling.	Ruane, Lynn.
Gallagher, Robbie.	Sherlock, Marie.
Hackett, Pippa.	Wall, Mark.

Kyne, Seán.	Warfield, Fintan.
Lombard, Tim.	
McGahon, John.	
McGreehan, Erin.	
Murphy, Eugene.	
O'Loughlin, Fiona.	
O'Reilly, Joe.	
O'Reilly, Pauline.	
Seery Kearney, Mary.	
Ward, Barry.	

Tellers: Tá, Senators Robbie Gallagher and Seán Kyne; Níl, Senators Fintan Warfield and Lynn Boylan.

Question declared carried.

An Leas-Chathaoirleach: I call on the Minister to make some concluding remarks.

Minister for Children and Youth Affairs (Deputy Roderic O’Gorman): I will not hold colleagues long; I know it has been a long day. I thank them for the detailed consideration they gave to the legislation. I hope they feel that today’s discussions have led to an improvement in it. As a result of our discussions today and earlier this week, I will be introducing in the Dáil an amendment to deal with the issue of the agency and people who gave testimony before the confidential committee as regards whether they want those stories anonymised. I have also made a commitment to introduce an amendment to ensure that the full archive remains sealed in the archive so ensuring a copy of the database and related records rests in the archive as well as moving to Tusla, as provided for under the legislation. I think I have also been able to provide confirmation about the very extensive index the commission intends to bring forward.

The deadline for amendments by the Dáil has been extended until 6 p.m. on Monday to allow parties and Independents from all sides to bring forward their own amendments following this process. I thank all Senators for their engagement today.

An Leas-Chathaoirleach: I thank the Minister for his positive remarks and his positive approach to the debate today.

Senator Gerard P. Craughwell: I thank the Minister for his patience today as we ran the Bill through the House, or perhaps I should say as we rammed the Bill through the House. In fairness to the Minister, he has listened and agreed to bring forward amendments to the Dáil. He has also extended the period for tabling amendments for the Dáil. I thank him for that, but this House has not crowned itself with glory today. Once again, we have given two fingers to democracy and rammed a Bill through all Stages in the House.

An Leas-Chathaoirleach: It is just concluding remarks at this time.

Senator Gerard P. Craughwell: That has to be said.

An Leas-Chathaoirleach: It has been said already.

Senator Gerard P. Craughwell: It cannot be said often enough. It must not happen again.

Senator Alice-Mary Higgins: The Minister knows my views and all Members have articulated theirs. The Minister has engaged on a number of issues and I urge him to continue to engage in a similar constructive manner with both Deputies and Senators, because when the Minister amends the Bill in the Dáil he will return with it to the Seanad. It would be useful to continue that dialogue to ensure that when he returns, hopefully, we will have an opportunity to see if some of the measures he has promised Senators have been put in their fullest and best expression into the Bill. We will be pressing for that.

There is a great deal of hurt and disappointment with the mother and baby home commission and with some of the process.

An Leas-Chathaoirleach: Thank you, Senator.

Senator Alice-Mary Higgins: The fact that the amendment deadline for the Dáil was moved to Monday is important. That is vital for democracy. I hope the Dáil will be able to build on the debate we have had here in terms of its amendments, and that the final product will reflect some of the issues both the Minister and Senators have articulated.

Senator Ivana Bacik: I thank the Minister for engaging with us over more than seven hours of constructive debate. We all acknowledge the Minister's comments on the index and his movement and engagement on some of the amendments we tabled. It is disappointing that the bigger issue of access to information has not been addressed in the Bill. We will work with the Minister to try to ensure we get decent information and tracing legislation through the House. It is disappointing that the Bill has been rushed in this way, and we have made those arguments. Ultimately, the commission's work is important, and we all want to work with survivors and families to ensure that full disclosures are made and we have access to the information we so badly need.

Senator Victor Boyhan: I thank the Minister for his time and for listening to and engaging with us today. It was a constructive and helpful debate. I particularly thank his officials and staff who are with him today as well as the Clerk and assistant clerk and the people who make this House work. We have all learned and travelled a journey today. Hopefully, we will engage further with the Minister. I wish him well in the Dáil in the coming days as he progresses this legislation.

An Leas-Chathaoirleach: Thank you. I appreciate the approach Members are taking. I call Senator Warfield.

Senator Fintan Warfield: Sinn Féin maintains its belief that the Bill should be withdrawn. We will take that approach into the Dáil. Our Dáil team will submit amendments to the legislation to remove Tusla from the Bill. I appeal to the Minister's humanity. He is the person who can finally deliver for these women and survivors who have been through so much.

An Leas-Chathaoirleach: On a personal level, the reason I asked Senator Warfield to wait a little is that it is nice to end on a joyful note. I congratulate Senator Warfield on his engagement last Friday. We wish him well and await further good news from him.

The final word appropriately goes to Senator Seery Kearney.

Senator Mary Seery Kearney: I thank the Minister and all the contributors to the debate. This has been a long and worthy day. On Wednesday, I expressed my confidence in the Minis-

16 October 2020

ter to address the issues of tracing and disclosure. I know he will and I heard that today. This Bill was never going to address those wider issues. I believe the last word of the day should go to the people who are at the centre of this commission's inquiry, and in our final words we acknowledge their pain and suffering. We look forward to them arriving at a place where they feel they are heard and have obtained justice.

An Leas-Chathaoirleach: I call Senator McGreehan. Make it shorter than the Gettysburg address.

Senator Erin McGreehan: I thank the Minister. He listened to all our concerns throughout the week. We are all worried about the impacts this Bill could have on the families, mothers and children involved in this story. The Minister listened to our concerns and took them on board. The remit of the Bill was narrow. We extended what it was meant to be for the better of the record of the mothers, families and children in those homes.

An Leas-Chathaoirleach: On my behalf and on behalf of the Cathaoirleach, I thank Members for the respectful debate. It was apt that it should be a respectful and controlled debate given the gravity and sensitivity of the subject. It was not a day for back-of-the-lorry style politics and that did not happen, which reflects well on the House.

An Leas-Chathaoirleach: When is it proposed to sit again?

Senator Regina Doherty: At 10.30 a.m. next Thursday.

The Seanad adjourned at 9.47 p.m. until 10.30 a.m. on Thursday, 22 October 2020.