

DÁIL ÉIREANN

AN COMHCHOISTE UM LEANAÍ, COMHIONANNAS, MÍCHUMAS, LÁN- PHÁIRTÍOCHT AGUS ÓIGE

JOINT COMMITTEE ON CHILDREN, EQUALITY, DISABILITY, INTEGRA- TION AND YOUTH

Dé Máirt, 28 Meán Fómhair 2021

Tuesday, 28 September 2021

Tháinig an Comhchoiste le chéile ag 3.30 p.m.

The Joint Committee met at 3.30 p.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
Ivana Bacik,	Erin McGreehan,
Holly Cairns,	Ned O'Sullivan,
Patrick Costello,	Mary Seery Kearney.
Cathal Crowe,	
Alan Dillon,	
Jennifer Murnane O'Connor,	
Mark Ward.	

Teachta / Deputy Kathleen Funchion sa Chathaoir / in the Chair.

General Scheme of the Birth Information and Tracing Bill 2021: Discussion (Resumed)

Chairman: We have received apologies from Senators Ruane and Keogan.

Before we begin, I have a few housekeeping matters to go through. If any member or witness participating remotely experiences any sound or technical issues, will he or she let us know through the chat function? Otherwise, we will proceed.

I advise all present that, as this is a public meeting, the chat function on MS Teams should be used only to advise participants of any technical issues or urgent matters and should not be used to make general comments or statements. I remind members participating remotely to keep their devices on mute until they are invited to speak, and when they are speaking I ask that, where possible, they have their cameras switched on and be mindful that we are in public session.

In addition, I remind members of the constitutional requirement that they must be physically present within the confines of the place in which Parliament has chosen to sit, namely, Leinster House, in order to participate in public meetings. I cannot permit a member to participate where he or she is not adhering to this constitutional requirement. Therefore, any member who attempts to participate in the meeting from outside the precincts will be refused.

To members participating in the meeting from the committee room, the following will apply. Members and all others in attendance are asked to exercise personal responsibility in protecting themselves and others from the risk of contracting Covid-19. They are strongly advised to practise good hand hygiene and they will note that every second seat has been removed in order to facilitate social distancing. I urge them not to move any chair from its current position. They should also always maintain an appropriate level of social distance during and after the meeting. Masks, preferably of medical grade, should be worn at all times during the meeting except, obviously, when they are speaking. I ask for everyone's full co-operation in this regard, which, in fairness, to date, everybody has been very good about.

This meeting is scheduled with a time allocation of two hours so it is to finish at 5.30 p.m. Our agenda item is pre-legislative scrutiny of the birth information and tracing Bill 2021, resumed. I officially welcome the Minister and his officials. We are joined by Ms Laura McGarrigle, assistant secretary; Mr. Karl Duff, principal officer; and Ms Eimear Cowan, assistant principal officer. The purpose of our meeting is to engage with the Minister and his officials on pre-legislative scrutiny of the general scheme of the birth information and tracing Bill. I will take this opportunity to remind members that when putting their questions to the Minister, they should adhere to the agenda item scheduled for discussion.

Before I invite the Minister to deliver his opening statement, I wish to advise him of the following in respect of parliamentary privilege. He is protected by absolute privilege in respect of the presentation he is to make to the committee. This means he has an absolute defence against any defamation action for anything he says at the meeting. However, he is expected not to abuse this privilege, and it is my duty as Cathaoirleach to ensure that this privilege is not abused. Therefore, if his statements are potentially defamatory in respect of an identifiable person or entity, he will be directed to discontinue his remarks and it is imperative that he comply with any such direction.

I now invite the Minister to deliver his opening statement. Then we will have questions and answers with the members. A speaking rota was circulated to members in advance of the meet-

ing. I hand over to the Minister and his officials. I thank them again for being with us.

Minister for Children, Equality, Disability, Integration and Youth (Deputy Roderic O’Gorman): I thank the committee for this opportunity to talk to it about the general scheme of the birth information and tracing Bill. I am grateful that the committee has prioritised this legislation in its programme of work. I think we all share a wish to urgently address this issue, and it is my hope that we can all work together to achieve that in the interests of the people affected. I thank the Chair in particular for extending the time period for submissions to accommodate some additional groups.

The committee will know that this legislation seeks to enshrine in law the importance of a person knowing his or her origins. It provides for full and unredacted release of birth certificates, as well as full release of birth, early life, care and medical information as defined in the legislation, to all people who have attained the age of 16 years. The proposed legislation also establishes a statutory tracing service and contact preference register to support people seeking to share information or to make contact with their family. Additionally, it contains important bespoke measures to address issues arising for people who have been impacted by illegal birth registration. Since publishing the general scheme, I have consulted widely and I am really grateful to all the people who have engaged directly with me, given up their time and spoken to me about the legislation.

The urgent need for this legislation has, I think, been recognised by all political parties, Independents, stakeholder groups and professionals working in this area. I think the committee will know that there have been repeated attempts in the past to legislate for information rights for adopted people, that they have all been fraught processes and that, unfortunately, none of them have ultimately succeeded. In the absence of bespoke legislation, data protection and freedom of information, FOI, legislation are used as the alternative routes to birth information. I think the committee would agree that such legislation is not an appropriate way to manage an individual’s request for birth information and that this has resulted in redactions, hurt, disappointment and many unanswered questions. This will continue for adopted children today until comprehensive legislation is enacted to change it. What is under consideration in this pre-legislative scrutiny is an opportunity to do so.

I have been listening very attentively to all the submissions made to the committee in the past few months and I am engaging directly with many of the affected people. In these remarks I will focus on some concerns that witnesses have raised when speaking before this committee. The points I will focus on are the terminology for mothers used in the Bill; the rights and services for mothers in the Bill; and the rights of adopted persons and why the information session is necessary to achieve robust legislation which can vindicate those rights.

I will first speak to the deeply sensitive issue of the term “birth mother”, which is used in the first draft of the heads of the Bill. I have met a group of mothers and have heard from them on this issue, and I am very clear after that engagement that a more suitable term is needed. My Department is engaging with the draftsman of the Bill on this matter. The mothers I met said to me that they felt that the term “birth mother” is reductive and hurtful. Some find the term “natural mother” more appropriate; others prefer the term “first mother”. At the same time, I have received the results of a survey of adopted people which was commissioned by the advocacy group Aitheantas, which indicated that among adopted people there was a preference for the term “birth mother”. These differing viewpoints are indicative of the challenge to find a term that is acceptable and works legislatively, but I stress that I am deeply committed to finding what that term is, and I acknowledge that the term “birth mother” needs amending. I look

forward to hearing Deputies' and Senators' views on this point at today's meeting.

An associated matter that witnesses and those making submissions raised was the question of information rights for mothers. The clear objective of this legislation is to provide important origin information to adopted people and others such as those who are subject of illegal birth registration to vindicate their identity rights. The legislation is essential for adopted people to achieve full release of birth certificates and birth information in all cases. Mothers will already have access to the birth certificates and to their own identity information. It is different information they are seeking, namely, records relating to themselves and, in some cases, current information on their adopted child. In the case of their own records, I have written to representatives of the mothers to whom I spoke to advise that their existing general data protection regulation, GDPR, access rights are not impacted by this Bill and, therefore, mothers can continue to avail of their existing rights under GDPR, data protection and freedom of information legislation to access information on records pertaining to themselves. They can also avail of the right to rectification, which is enshrined in the GDPR. This provides a route for mothers to rectify personal data held about them in historical files that they consider to be inaccurate or incomplete. That was a real concern for the mothers I spoke to. The existing rights of rectification under GDPR provide a clear avenue to address those issues.

In the case of seeking contact and current information relating to their adopted child, the proposed legislation provides two important mechanisms for mothers and other family members, namely, a statutory tracing service and the new statutory register. A mother will be able to apply for a tracing service to actively trace her adopted adult child, either to share or request information, including medical information, or to seek to meet. Similarly, a mother can use the statutory register to lodge a contact preference and information.

I would like now to address witnesses' comments on the information session. I have heard it expressed before the committee that the information session is not required and that it hampers the release of information. That simply is not the case. The legislation aims to provide a clear legal basis for the full release of the birth certificate and birth information in all cases. To achieve this, the legislation must contain a mechanism to balance two sets of constitutional rights, namely, the privacy rights of mothers and the constitutional identity rights of children. Failure to provide that balance within the legislation risks it being found unconstitutional.

The manner in which this mechanism works is that it contains three key elements. First, there is a temporal limitation whereby the relevant person must be aged over 16 years before he or she can seek the information. Second is the information session itself, to inform the relevant person in cases where a parent has clearly registered a no-contact preference. Despite that, full information will then be released to the adopted person. The third element is counselling and support for parents and adopted persons, should they wish to avail of it. The session is a necessary and minimal mechanism to achieve the full release of information to all adopted persons and I stand behind it as a fair and compassionate way to communicate with an applicant that a parent has asserted a preference not to be contacted. A written statement appended to the information does not adequately fulfil the State's obligation to convey the mother's request for no contact and is not the correct way to communicate this type of information.

This legislation recognises that mothers are not a homogenous group. The committee will know that most mothers - a very significant majority or maybe a vast majority - are happy for the information to be released and in such cases, there is no requirement for an information session. However, there are some mothers who experienced a crisis pregnancy and had little or no choice or supports at the time. They have lived with this all their lives and may not have

told anyone. We all know there is a very human dimension to this that goes to the very core of this debate about balancing constitutional rights. This group of mothers has lived with pain, hurt and fear. My Department has received anonymous calls from women in that position. I recently received a handwritten anonymous note from a woman outlining her situation about her crisis pregnancy. These women, because of the nature of their situations, will not be in a position to come before this committee to make their own case and as legislators, we cannot ignore their constitutional rights.

Equally, and I think we are all in agreement on this, we must act urgently to vindicate the rights of adopted people by providing a clear and straightforward basis for the release of full birth certificates and birth information. This legislation does that. Crucially, it breaks the link between the release of information and any subsequent contact as a result of that release. The information session is a vital component to achieving that and breaking that link. Even where a mother has registered an opposition to the release of her name, it will be released in all cases following the information session. That is the enormous change that this proposed Bill brings about. Previous attempts to legislate were severely criticised for processes that were much more adversarial. They were viewed as pitting the position of the mother and that of the adopted person against each other and for not guaranteeing the full release of information in every circumstance. This information session, as provided by this legislation, is non-adversarial. It is a simple, minimal measure that recognises the challenges, complexities and sensitivities for those impacted by adoption. That is the intention behind the information session.

Listening to the contributions the committee has received, I have heard the concerns that have been raised. I will be bringing forward, and am already working on, some amendments to address those concerns and ensure the information session better emphasises the identity rights of the adopted person. They will also ensure that the session can be held virtually, which will be particularly beneficial for the many people living abroad who will be seeking access to information through this legislation, and will remove the requirement for a social worker in every case. I know that was an issue that some groups had raised concerns about. The amendments will ensure the information session is as sensitive and user-friendly as possible.

I thank the committee again for the invitation and for the huge work each member is putting into considering this important proposed Bill. I thank everyone who has made submissions to the committee up to this point. I have taken the time to speak to some of the issues that have been raised in the submissions the committee has received to date. No doubt we will discuss those more in the context of members' questions. I believe the pre-legislative process strengthens the legislation and I look forward to receiving the committee's final report. After consideration of the report, I will engage with the Attorney General to make necessary changes to the draft heads of the Bill. The committee has my assurance that I will look to bring this Bill into the Oireachtas as quickly as possible thereafter.

Chairman: I thank the Minister. We will now go to questions, starting with Deputy Cairns. Everyone has seven minutes initially and if we have time at the end I will allow people back in.

Deputy Holly Cairns: I thank the Minister for coming to the committee today. I have lots of questions as this is very important legislation. The first is a "Yes" or "No" question. Has the Minister or the Attorney General sought advice on whether this Bill is compliant with EU GDPR law?

Deputy Roderic O'Gorman: Yes.

Deputy Holly Cairns: Head 40 sets out to restrict rights and obligations under GDPR. Is the Minister entirely confident, based on that advice, that such a blanket exclusion is compliant with Article 23 of the GDPR? Witnesses before the committee expressed concerns that head 40 might not meet the criteria set down in Article 23. On what basis is the Minister making that assessment? Has the Attorney General provided that advice to him? From where was it got and is it possible to make it available to the committee?

Deputy Roderic O’Gorman: Head 40 is in draft format at the moment. When the Bill is finalised, head 40 will be very clear in terms of which aspects of GDPR the Bill proposes to restrict. The reason we would be suggesting any restrictions to GDPR rights is that GDPR protects the rights of all data subjects. It protects the rights of an adopted person but it would also protect the rights of a parent, including perhaps a birth mother. Among the rights of GDPR is a right to object to the processing of information. There is the possibility that a mother could object to an adopted person seeking access to information on the basis that the mother was exercising her right to object under GDPR. I think that is Article 21 of the GDPR. We have come to the conclusion, and I think it is a shared one, that we want adopted people to be able to get full access to all information in every case. It is because of that we are taking a decision that certain rights under GDPR will be restricted but those restrictions will be set out very clearly in the final version of the Bill that will be brought to the Oireachtas. All committee members and Deputies will be able to look at what specific articles are restricted and the reasons for that. I hope that answers the Deputy’s question.

Deputy Holly Cairns: It is confusing that the Minister’s opening statement referenced unrestricted access for people to exercise their rights under GDPR, yet in his first response he talked about how this Bill sets out to restrict that access under GDPR. There are so many points to get to.

The Minister claims the Bill enables full and unredacted release of birth certificates, along with birth, early life care and medical information, but numerous witnesses have pointed out the significant restrictions in the legislation. First, the Bill contains a list of excluded information, which includes care provided by a parent or guardian to the adoptive parent or to the child. In addition, under head 2, the only information permitted regarding relatives is whether a person has a relative, his or her sex and whether they are younger or older. The use and definition of early life information is another very clear restrictive measure; it is vaguely and narrowly defined as the period following a person’s birth. People have made it very clear that information before their birth on their parents could be very relevant. Why are those limitations in the Bill? Collectively, those parts of the Bill are intentionally restrictive and can by no measure be deemed full access to information.

There are other exclusions that will affect natural mothers and relatives. Numerous provisions absent from the Bill that have been identified by witnesses include no provision for mothers to access their information, including mixed personal data, about what happened to their child, and no means for relatives of the deceased to access information. The rights of siblings to information about one another are also ignored. Will the Minister address those glaring deficiencies?

The Minister stated that it could be deemed unconstitutional if the information session was not there. The compulsory information session was highlighted as a serious issue by so many witnesses. Groups pointed out that it is condescending, paternalistic and many other things. The Minister claimed it is a fair and compassionate way to communicate with an applicant but he is now saying the Bill is unconstitutional without it. What is the basis of that assertion?

Again, was that information provided by the Attorney General and can he make it available to the committee?

Deputy Roderic O’Gorman: I will do my best to address those questions. The Deputy stated it was confusing who gets unrestricted access to information under GDPR when we then talk about restrictions. We have taken the decision, and it is one I think everyone agrees with, that we have to provide adopted people with unrestricted access to the various categories of information. In certain circumstances, that requires a restriction on the rights of others; in this case, the rights of a parent. That is inherent in the process.

To address the Deputy’s last question about the information session, that is what we are trying to achieve here. A constitutional right to privacy is recognised in Irish law. There is also a constitutional right to identity information. In a circumstance where a parent, or a mother, does not wish the fact he or she gave a child up for adoption to be known, his or her right to privacy is conflicting with the identity rights of the adopted person. Our legislation has to find a way of balancing that. The Constitution and the courts allow the Oireachtas to balance rights, but it has to be seen that both sets of rights have been taken into consideration in the legislation. That is why we see the meeting as very important because it all times guarantees the provision of full access to information for the adopted person but also ensures the privacy rights of, for example, the mother are present in this process if that mother has requested no contact and that is conveyed to the adopted person. A meeting has been used and brought forward-----

Deputy Holly Cairns: May I respond very briefly to that?

Chairman: We have to move on. There should be time at the end and I will allow people, and the Minister, back in.

Deputy Cathal Crowe: I probably will not take all of my time because I will be running over to the Chamber in a moment. I will raise a few points. I thank the Minister for his engagement with us today. This has been a very long and protracted process. I note from his opening statement that he said the group of women we met - many of them as witnesses in front of this Oireachtas committee and many of them at the gate of Leinster House and in our constituencies - are not homogenous. Their concerns, at times, are conflicting, as the Minister has mentioned. I welcome the fact he is trying balance the right of a mother who does not want her identity known versus that of a child who for decades has craved to know who his or her mother is. It is so important that names are released following the information session as outlined by the Minister.

I was asked this question over the summer and it was one I was not able to properly answer; has this legislation looked at all scenarios in which the maiden name of a mother must be disclosed? Nearly every month, we have to fill in various forms of paperwork. It could be a passport application or a school enrolment. There is a plethora of situations in Irish life where you are required to state your mother’s maiden name. Many adoptees do not know what that is and this legislation paves the way for them to know it. Does this legislation square off all the scenarios where you may need to go back to correct a mother’s name? Will this be a requirement? I had not thought of this scenario until it came up during the summer. Someone came to a clinic in my constituency and said that this throws open many scenarios whereby he may have to go back to correct information, potentially, for children and grandchildren. It is almost a trickle-down of information that may have to be corrected.

The removal of social workers in every case was something we heard about in one of our

last public sessions before the summer recess. I have also heard from people during the summer break that, at the other end of the spectrum, we have many foster parents in Ireland. I have spoken to the Minister about foster parents who are going through the process of trying to legally copper-fasten adoption. Some are waiting six or seven years to do so. They are concerned that we are very soon going to have two processes going through the same funnel of the State in trying to have recognition and securing that legal copper-fastening. They are worried that there may not be enough social workers to hear their cases or to be assigned to them. The two processes may conflict with each other, meaning that their caseloads are kicked further along the road. I hope I have correctly captured their concern and I hope the Minister might be able to allay it.

My final point is one I made many months ago. There has been all sorts of commentary in the media about this legislation looking, at times, patriarchal, something I refute. If anything, it looks matriarchal because, and I ask people to bear with me, each section of this refers to mothers and babies. It is impossible to capture but I want to say again, as a male member of this committee, men are written out of this legislation. What I mean by that is from the 1940s to the 1970s, men who got a girl in their local community pregnant bought a ticket for the ferry and went off to Wales or America. They are mentioned nowhere by our committee. They cannot attend as witnesses because they have chosen anonymity from the get-go, running out of town and running away from responsibilities. Some of them still live up boreens and laneways in the west and east of Ireland. Much of their motivation in running away from the girl they got pregnant was to protect farms, landholdings and not to fall foul of church and State. They had a whole mishmash of messed up reasons for not standing by the girl they got pregnant. We cannot fully capture all of that in law. It cannot be written into section 1, section 2 and so on and so forth. There is a lot of commentary in the media about this legislation. It pains me time and time again as a father to three young children. I have many friends who are fathers, and some who are not, but there is a lot to be said for someone who stands by children, both in the modern day and in the past. This legislation and the volume of work the committee has undertaken so far has failed to capture that. I want to put that on record in some shape or form.

Deputy Roderic O’Gorman: Deputy Cairns asked about next of kin. I am happy to come back on that because it is an important point. I thank Deputy Cathal Crowe. Fathers will be able to use the contact preference register and the statutory tracing service to indicate if they want to provide information, receive information, or if they want contact. There is a provision for them to use the system.

I was able to provide significant additional resources to Tusla in last year’s budget to support all its services, including the work it does with foster parents and providing for adoptions. I am conscious that the skills that social workers have are not the only skills that are needed regarding information and tracing. A number of groups, including the Adoption Rights Alliance, made that point. We will look to bring a wider range of skills into Tusla. I discussed it with the chief executive last week. I had a similar conversation with the chief executive of the Adoption Authority of Ireland. Additional resources will be provided. There will be some additional social workers but not just social workers. This will not be a scheme led by social workers only. It will not impact on the wider services that Tusla provides.

There may be two elements related to the maiden name. Illegal birth registration is a discrete issue, which this Bill also addresses. It is where an incorrect name was placed on someone’s birth certificate. In that situation, we are making provision for a mechanism where people’s birth certificates can be corrected but the names they have used throughout their life, their lived

identity, will get full legal recognition. There will be no threat to any documents they have signed, contracts they have entered into or declarations that they have made. This legislation provides access to birth certificates for adopted people, which is the core document that would have a mother's maiden name on it. It would not require rectification, just access.

Deputy Cathal Crowe: The Minister has answered very well.

Deputy Jennifer Murnane O'Connor: Some of my questions have been answered. The Minister spoke about GDPR. I have heard from people who sought access to information under Article 15 but have been denied that access because they are not identified as the data subject. If records relating to a person's mother and father are not available because the person is not identified in those records, while I am not saying it makes a mockery of it, the tracing aspect does not make sense to me or the people I have been talking to.

The Minister spoke about the counselling aspect of this Bill. This is probably the most important Bill that we will ever pass through the Dáil and it is important that we get it right. I ask the Minister about funding for counselling and Tusla. The Government recently provided €10 million for mental health and this funding has not been allocated yet. We need to make sure that there is funding in place because this will be crucial in future. I want to speak to the Minister about redress, another issue which is rightly important. Last week, the redress scheme details were only to be shared with stakeholders but the information was made available to the newspapers. Some stakeholders were not happy about this. There has been so much hurt and anger in the community. Many people's lives have been affected by this. We have to make sure that we get this legislation right. Funding will play a significant part in this. People are not getting any younger. What is the timescale for this Bill? That is my main question for the Minister. I know that different Bills have come through the Dáil and we have seen other parties introduce Bills. I have talked with people and families and we have to make sure that the legislation is passed as soon as possible. The Minister might come back to me on that.

Deputy Roderic O'Gorman: The timescale for the legislation is a matter for the committee right now. It is giving the legislation the detailed scrutiny that it needs. As soon as the committee has completed that and sent its report to me, it has my absolute commitment that I will work with the Attorney General and the Office of the Parliamentary Counsel to make amendments and get it to the Oireachtas as quickly as possible. There is unanimity across all parties and Independents that we need to do this as quickly as possible and that remains my intention.

There has been speculation about redress in recent weeks. I contacted survivors last week and informed them that I will bring the redress proposals to Cabinet in early October. As soon as they are approved by Cabinet, I will inform survivors.

I will deal with counselling in the context of this Bill. The final draft will provide for counselling for mothers, parents and adopted people seeking to use the processes. We will ensure that counselling is there for those who want it. Not everybody wants or requires counselling but it will be available to those who want it.

On wider supports, when the report of the Commission of Investigation into Mother and Baby Homes and certain related matters was published in January, counselling was provided through the national counselling service. A specific stream of counselling, which is accessible to survivors of mother and baby institutions, continues to be accessible. We got an update from it. It is fully funded. Some 158 individuals have sought access to that counselling since the publication of the report. About 80 sought access in January of last year and it has decreased

in successive months. That counselling is in place and it is free to use for survivors of these institutions. The details of accessing it are available on my Department's website. I can maybe circulate that to Deputies. They might find it useful to survivors who are coming to them.

The Deputy led with the issue of people being unable to use Article 15 because they are not the data subject. This is another significant complication created by the issue of illegal birth registration, where incorrect details were inserted on people's birth certificates. This legislation seeks to address that. It is clear that people who we have confirmed were subject to an illegal birth registration and people who have reasonable grounds to suspect that they were subject to an illegal birth registration will be able to use the processes in this legislation to get access to their information, to go on the contact preference register and to use the tracing service. Those who are subject to illegal birth registrations can use the process as set out in section 7 of the legislation to correct and protect their legal identity.

Deputy Jennifer Murnane O'Connor: I spoke about the timescale of the Bill. While I welcome that, we as a committee need to move forward with this. One of the most significant issues with this is the timescale. Could the Minister maybe look at putting a timescale on it, even though we are addressing witnesses here? We cannot be in a situation in six months or a year where this has not gone through the Dáil. I ask that this be a priority. I know that our committee will make it a priority. I ask that we get it through as quickly as possible. We as a committee have made that commitment.

The Minister said that information about counselling services is on the website. I thank him for that. Has there been much uptake of these services? That is important. We need to have more awareness and information. I feel that that is where we fall down. What is the uptake? Does the Minister think that we need to have more communications and awareness about this?

Chairman: I will ask the Minister to come back in at the end on that because we are out of time. I anticipate there will be time at the end but I want to be fair to everyone in the first round. I need to confirm whether Deputy Phelan is on the Leinster House complex.

Deputy John Paul Phelan: I am not, sorry.

Chairman: I cannot allow you to ask a question. Apologies for that. Is Deputy Costello on the Leinster House complex?

Deputy Patrick Costello: Yes. I hope I am facing the right way.

Chairman: You are facing the right way but we cannot really hear you.

Deputy Patrick Costello: Apologies.

Chairman: That is better. We can hear you now.

Deputy Patrick Costello: I will lean in and speak a bit louder. One of the purposes of pre-legislative scrutiny is to ensure that we hear the voice of everyone who can contribute meaningfully to the creation of the legislation. What consultation has the Minister had with survivor groups and family groups before this? To reflect what Deputy Murnane O'Connor said, there is a need to be able to progress this as quickly as possible. The maximum level of consultation and engagement with those who have a direct interest in the legislation will, of course, help it to go through more smoothly and quicker. Related to this is communication with people who have been adopted. How is the Minister reaching them? How is the Minister speaking to them?

In particular, how is the Minister overcoming the challenge where people may not be aware of their own family past, given the clandestine and illegal nature of some of the adoptions that took place?

Another issue I want to raise is funding and resources. As several Deputies have mentioned this, I will try to keep it brief. Will the Minister assure us that Tusla and the Adoption Authority will have the necessary resources? Throughout this process, concerns have been voiced by survivors and families on the difficulties they have had in engaging with the information and tracing section of Tusla. Has the Minister given consideration to a new agency that could take this on that would not come with the same emotional baggage or history of causing concerns among those who need the service most? This ties in with questions on resources.

I want to raise a question on counselling. We have spoken about counselling being available to survivors and adoptees. There are wider family members. We have seen many issues relating to mother and baby homes where family members, who may be brothers, sisters, nieces, nephews, cousins or uncles, did not know where their family members were or whether they were there at all. There are wider family members around the mother and child who were also heavily impacted by this. Are we making counselling available to these wider family members? What supports are we making available to fathers, where they are known?

Deputy Roderic O’Gorman: I thank the Deputy. I have met a wide range of groups and individuals in advance of the publication of the heads of the Bill and particularly since they were published. I have met a number of the campaigning groups in this area. I have met the Adoption Rights Alliance, Aitheantas, Tusla and the Adoption Authority of Ireland. Last month, I visited Tuam, where I met four of the groups representing families there. We spoke about this as part of a range of issues. I have also engaged, individually and collectively, with a significant number of people subject to illegal birth registrations. A number of them were included in the “RTÉ Investigates” documentary “Who Am I?” a number of months ago. I met a group of them who worked together. I also met eight or nine individuals who were subject to illegal birth registration. I have consulted widely and these consultations have shaped some of the changes I am proposing today. We continue to listen to these groups. I also met the group of mothers I spoke about earlier. They have addressed the committee or will do so in the near future.

I take the point on communication. Once the Bill is passed there will need to be a significant campaign of communication in the first three months to let adopted people know of their rights under the legislation and to inform parents, particularly mothers, of their right to use the contact preference register to indicate a type of contact preference or a no-contact preference.

In the consultation we did on redress, we engaged with advocacy groups representing survivors outside of Ireland, embassies and Irish diaspora groups. This is one of the ways in which we have communicated. We did a widespread media campaign on the consultation we did on redress. We will look to refine this and roll it out intensively in the three-month period between the passing of the legislation and when people can start to apply to access their information under the legislation.

On the question of resources and a new agency, my focus has been on the delivery and accessibility of all of this information as quickly as possible. My fear about creating a brand new agency is that we know how long it took to establish the HSE and Tusla. It would act as a delay to people accessing their information now. This is not to say something will not happen in the future but this legislation provides access to information within three months of the Bill

being passed. A number of Deputies have spoken about the importance of getting information to people as quickly as possible.

The Deputy is absolutely right in terms of the issue of resources. I have spoken in detail to Tusla and the AAI on what additional resources they will require. It will form part of my Estimates bid to the Minister, Deputy Michael McGrath, this year. The Department is working with these two agencies on how the legislation will be implemented once it is passed. We are not just waiting until the legislation is passed to plan for the step-by-step implementation. We are already working on it in the Department and the two agencies.

With regard to counselling and tying back into what Deputy Murnane O'Connor was saying, the take-up of the national counselling service has not been huge. We note 158 survivors of these institutions have used the national counselling service. There probably is more that can be done in terms of making people aware of it and we will definitely look into it. The provisions of this particular support is in the context of survivors themselves. I take what Deputy Costello has said about the impact on wider family members. People looking to use the information and tracing legislation, whether adopted people, mothers or fathers, will all be able to avail of supports under the legislation when the final draft comes through.

Senator Erin McGreehan: I confirm I am in Leinster House. The Minister is very welcome today and I thank him for his continuous engagement with all of the work we do on the committee. I will pick up on a number of issues. As the Minister has said, language is very important. Over the past while, since newspapers published articles about the terminology the Minister is proposing to change, some very upset people have contacted me about the move away from using the term “birth mother”. Mothers are very upset about this. To say that giving birth could be reductive or harmful is quite upsetting to many women. If the wording is changed to “natural mother”, it implies there are unnatural mothers. That is a really dangerous connotation we could start to derive from it. There is no such thing as an “unnatural mother”. I find the concept very upsetting, as do the mothers I have spoken to on both sides. While birth mothers, who give birth, rightly feel they are mothers, it is objectionable that adoptive mothers could be somehow classed as “unnatural”. I appreciate that the Minister has met some mothers who hold his position but there are many mothers who are genuinely upset over this. What engagement has the Department had? It seems we are moving away from international norms on this. For over 30 years, “birth mother” has been the general term given. It is deemed as the most genuine and realistic.

In our consultations and discussions on this legislation, the reference to the meeting has arisen. How has the Department deemed this to be the best way to balance the sets of rights? How does it respond to the view that it is possibly another barrier to getting the birth certificate and records, and also to the view that there is not unfettered access? How would the meeting be conducted? How onerous would it be for the individual concerned? If someone is very much against going to one of the interviews, is that the end of the story for her in that she would just not get the relevant information? I am curious about that.

Many of the topics have been discussed by the Minister. I would be very interested in hearing about the plans of the Department to have a centralised agency for adoption. Is there any process — I am aware it is not a matter for this legislation — that the Department is examining? We are all aware that centralised records would represent the best approach, considering that we are dealing with historical issues in this regard.

On illegal birth registrations, will those individuals who have been illegally adopted or,

rather, not adopted be entitled to any emotional or psychological support? Is the legislation going to assist them in finding their truth?

Chairman: There is about two and a half minutes left in this section.

Deputy Roderic O’Gorman: I will do my best. I will come back to some of the questions afterwards because some of them were really important. The first point the Senator raised was a really difficult one. Inasmuch as she has spoken to mothers who very much see themselves as “birth mothers”, I have engaged with mothers who feel the term “birth mother” reduces them simply to individuals who gave birth, the implication being that the birth was their entire involvement with their child. They find that deeply insulting. They find the fact that the term has been used for 30 years deeply insulting. The Senator referred to the term “natural mother”, which some mothers have suggested as an alternative. The Senator also referred to engagement with adopted children who believe the terminology used casts aspersions on their adoptive mothers. It is incredibly difficult.

What I was trying to do today was outline that I am cognisant of this issue. We are engaging with the relevant groups. There is a group in NUIG considering terminology. We are engaging with it also. We might have the opportunity, when the legislation is finally on Committee Stage, to consider this matter in more detail. I was really struck by the unanimous opposition of the group I met to the use of the term “birth mother” but I accept there are other views. As we said earlier, mothers do not comprise an homogenous group. I am flagging my willingness to engage and work further on this to try to reach a solution. We may not arrive at wording that pleases everybody, which is a risk. As Members of the Oireachtas, we have to be conscious of that.

Chairman: The time is up but here will be time at the end.

Deputy Roderic O’Gorman: I will come back to the issues of the information session, the specialised registry and the supports for the illegal birth registrations group. Maybe Senator McGreehan can ask me about them later.

Senator Mary Seery Kearney: I thank the Minister for being with us today. I echo what has been shared by Senator McGreehan on terminology. I respect the Minister’s remarks and replies but, even in the context of all this, the use of the word “adoptee” can be reductive because there are those who were not adopted but illegally placed. There were all sorts of illegalities in regard to them. In our pursuit of accurate language, we should not delay the Bill in any way, nor should we delay moving to a place where people have rights. I am anxious about that.

Throughout this process, I have been struck very strongly by the needs for a new agency and for us to move to a place where we can put behind us the baggage of the past, some of the expressions that have been used and the treatment of people by some of the existing agencies, which fell far short of professional. We are anxious to put these behind us as quickly as possible.

Let me move on to my questions. I would like to address the matter of the information session. I completely respect the fear and hurt caused to people who have been adopted, or were otherwise removed from those who gave birth to them, by their being considered a threat to those who gave birth to them, or by any inference in that regard. I deplore any allegation or inference of that kind. However, I too have received anonymous telephone calls and letters from people who are fearful about who may show up on the door because they have never told

anyone in their lives that they give birth to a child. They believe there is a threat to their current life. I can understand why, when we are looking for a constitutional solution, we need to discharge our responsibility regarding the right to privacy of such a person. The lawyer in me moves to the worst-case scenario, namely, a suit against the State involving the question of what we have done to discharge our obligation on the right to privacy. I understand that but, in regard to the information session, what alternative was considered? Was the information session the only solution? Group after group has come out against the idea. There are a couple of flaws in the idea of the information session.

In the Minister's remarks today, which I really appreciated, he referred to the idea of upset being caused to people by their being told someone does not want to make contact with them, yet this issue is about discharging the rights of the person who has expressed a right to no contact. That centres the provision on the person who is going to be the recipient of the information as opposed to the person who wants no contact. That may be a flaw in our argument.

The second point concerns the circumstances if we have established that an information session has to be held if there is no contact. If I were seeking my birth certificate and all my information and the response I got was a call to an information session, I would then know I was going to be told there was to be no contact. I would already know from the letter or other form of communication inviting me to the meeting that I was going to be told there was to be no contact. In a way, this undermines the value of the session.

The other problem concerns the idea of the solution being found in tracing when mothers want to contact their children. I am aware of situations in which family members have been left a letter in a will informing them they have a sibling somewhere. If there is a flaw in the information, then tracing is not going to work. If the birth was registered illegally, there is going to be no means of tracing. I know that I have thrown a couple of issues at the Minister. The information session is my main concern but I can return to the issue of tracing in the second round.

Deputy Roderic O'Gorman: It is important to remember that the central purpose of the information meeting is to ensure that the constitutional privacy rights of a parent or a mother who indicated a no-contact preference are respected. It only applies to that group who have clearly indicated a no-contact preference. The purpose of the meeting is to ensure that the no-contact preference is respectfully conveyed to the adopted person. That is the central role of this meeting. That is necessary to ensure that if this legislation were to be challenged or referred to the Supreme Court, the Supreme Court could look at it and determine that the Oireachtas - because it is not just a Government decision, it is an Oireachtas decision because we all pass this legislation - looked at the right to identity information and the right to privacy. The Supreme Court would be able to see that although we prioritised the right to identity information, privacy concerns were also considered.

The Senator asked about alternatives. In the context of alternatives, we look at what was suggested in previous legislation. In previous legislation, an adopted person was asked to sign an undertaking that he or she would never contact his or mother. In the Bill that was drafted in 1999 and 2000, there was talk of a criminal prohibition of contact, which is obviously an incredibly draconian approach to take in respect of adopted people. More recent legislation included the possibility of a lengthy adversarial system whereby the mother would go before the District Court or Circuit Court and state why she did not want her name given and the adopted person, in a separate sitting, would provide his or her information. It involved an incredibly adversarial approach. Those are some of the other options that were floated in the past. They were proposed and included in draft legislation that was debated in the Houses. I do not believe, and

I do not think anyone believes, that they are a good way forward.

The current legislation provides for a meeting, at the end of which there will always be the conveyance of the full and unredacted information. That is the key point, because some of those other processes that I mentioned could, in certain circumstances, result in the adopted person not getting the information at the end of the process. Under this legislation, the adopted person will always get access to the full and unredacted information. Do I have more time?

Chairman: I will let the Minister back in at the end. There will be a good amount of time available then.

Deputy Ivana Bacik: This is my first meeting as a member of the committee. I am conscious that other members have already been through some hearings on pre-legislative scrutiny. I welcome the opportunity to be here. I thank the Minister for his outline of the Bill. I was very involved in the Minister's predecessor's attempts, and indeed with other attempts in the past, to try to draft legislation. Unfortunately, it has always been a very tortuous process and as the Minister has outlined, we have ended up with very cumbersome mechanisms being put in place in an attempt to address this balancing of rights, as described. We were previously told that balancing would not be constitutional unless there was effectively a veto in favour of privacy over information. I am glad we have moved beyond that.

My first question is to ask why we still need a three-pronged mechanism to ensure that balancing. The Minister has described it as three elements: the temporal limitation of the age of 16, the counselling and support of which mothers and adopted persons may wish to avail, and the information session. Given there are three elements, we should look again at the information session under head 3 and head 7. I welcome the fact that it is now going to refer to the right of identity, which is currently absent and a real glaring omission under head 3 and head 7, but if it is to become a virtual interaction with no social worker present, then why not replace it with the information booklet that many of those who made submissions to us sought, and an optional offer of counselling or a meeting, as per head 4, for birth parents? It seems to me that would sufficiently address the constitutional concerns around balancing privacy and identity rights. As I have said, for far too long we have favoured privacy over information and identity. We are an outlier in terms of access with this sort of conditional access, as many human rights groups have described it to us, and would remain so, even with head 3 and head 7, albeit that they are a great improvement on what was proposed before.

I must say that the three-month period is a hugely positive option. We explored this before as a way of ensuring that people were aware of their rights. It has been done in respect of survivors of residential institutions. It could be a hugely positive way to address that awful closed and secretive system of adoption that has prevailed for far too long but I wonder why we are still preserving these very cumbersome mechanisms when something more straightforward could be put in place rather than this compulsory meeting. As Senator Seery Kearney stated, if you get notification about an information session, then you know there is a no-contact preference. In a way, that fulfils it. Why, then, proceed with the meeting?

I also ask that we see a timeframe for the supply of information in head 3 and head 7. It is currently lacking, unless perhaps I have missed it. We could include a phrase such as "as soon as practicable" or "as soon as possible". That would assist in balancing with the rights to identity and information and giving them the priority they deserve and require.

I would like to make three other brief points. The first concerns language, which is a com-

plex issue. We have seen the submissions referring to the issues around the use of the phrase “birth mother”. I am interested to note that the phrase “birth mother” is only used in the interpretation section. Elsewhere throughout the heads, the phrase “birth parent” is used. I wonder if the issue could be addressed in the interpretation section. Otherwise, the Bill is gender-neutral by referring to the “birth parent”. I do not see the same objection to that phrase. I absolutely agree with the NUI Galway group, and it is great that the Minister is engaging with the group, because I think there are other areas where the language is problematic, particularly in the explanatory notes, where the phrase “birth mother” is used repeatedly, and under head 16 in explanatory notes, which refers to birth mothers giving up more than one child for adoption.

I will make two other quick points. I welcome the provisions on illegal birth registration but we need more on the right of appeal and the process of correcting the register. Finally, how will the Bill apply to children adopted to or from abroad? That question was raised in the submissions.

Deputy Roderic O’Gorman: I welcome the Deputy to the committee. I will try to address her points. In terms of the use of the phrase “birth parent”, I am open to looking at how we can address that and use language to correctly and appropriately represent mothers and fathers through the Bill. I am open to anything there.

We can definitely look at the issue raised by the Deputy in respect of the timeframe.

The provisions on illegal birth registration are extremely important and represent a very significant process to allow those subject to illegal birth registration to confirm their legal status. If there are particular issues that the Deputy wishes to flag up, we are happy to engage as we go through this process.

On the issue of the information meeting, the central point is that this legislation has to be seen to have considered the privacy rights of the parent. The Deputy is absolutely right that the Irish approach has for far too long elevated the privacy rights over the identity rights. We are flipping that in this legislation. We are putting the identity rights as central and guaranteeing that absolute right in every circumstance. As I did, the Deputy listed the three prongs of the protection of the right to privacy. The counselling element is not a mandatory element in that people do not have to take up the offer of counselling if they do not want to. The temporal element does apply to everyone, in that everyone has the right of access after the age of 16. On the information meeting element and having it apply to everyone or changing it to involve just the conveying of information, a significant minority of parents or mothers may be affected. The concern relates to cases where people come forward to indicate a clear preference for no contact and, in doing so, indicate that they want some vindication of their privacy rights. Conveying that fact directly to someone, whether face to face or, as I propose, via a virtual meeting, ensures that if this legislation is challenged on the basis that it does not fully acknowledge a person’s privacy rights, the State can strongly defend the legislation by demonstrating that a process was in place whereby the preference was conveyed directly rather than in writing, which might not be as strong.

Chairman: There will be time for further contributions. I ask Deputy Ward to confirm his location.

Deputy Mark Ward: I am in Leinster House. I thank the Minister and his staff for taking the time to meet us today and for the engagement. It is welcome. As previously mentioned, this is a tough, emotional and sensitive process for everyone involved, mothers and adopted

persons. The Minister and previous speakers referred to counselling supports for those who want them. This is an important issue. Will information be provided regarding what supports are available? Will people be actively encouraged to avail of such supports?

All my questions relate to counselling. The Minister mentioned that the NCS is providing services for survivors of mother and baby homes. In future, what organisation will be responsible for providing this counselling? I ask that because we had representatives from Tusla before the committee and, as far as I remember, they thought Tusla would have to deliver this service. When I asked about capacity, they expressed concerns about whether Tusla had the required capacity to deliver such counselling supports. Which agency will be responsible for delivering counselling supports? Will financial resources be made available in that regard?

I will contextualise this issue in respect of a point made earlier. In February, we had a big announcement that €10 million would be provided for mental health support services in the context of Covid. That €10 million has not been spent yet. I am not blaming the Minister, but there has been much talk previously from other Departments about the provision of mental health supports without any substance to go with those announcements. Those are my questions for now. I may come back in later.

Deputy Roderic O’Gorman: I thank the Deputy for his questions. As I said, the final draft of the Bill will be different. These are the heads of the Bill and there will be improvements. The final draft of the Bill will provide for the provision of counselling supports for those who were adopted, those subjected to illegal birth registration and those mothers and parents who seek to use the processes provided for in this proposed Bill. The initial drafts contained more clarity for mothers, but there will be provision for supports for everybody.

Deputy Ward asked about active encouragement. I am a little wary about that. We will make it known that these supports are available but it is for mothers and adopted people to make their decisions regarding whether they use such supports. Some adopted people would not like to feel they are being funnelled into using a service that they do not want to use. These supports will be well advertised but not in a directive way. We will let people know the supports exist.

Tusla will provide the counselling. The Deputy is entirely right to raise the issue of resources in this regard. We are conscious that this legislation and what it entails will require the provision of significant additional resources for Tusla and the Adoption Authority of Ireland. I reiterate that I met representatives of both those bodies. We spoke about numbers of additional staff and the type of staff needed. As I said, this service will not only involve social workers, particularly the tracing element. It may also involve genealogists to assist with the tracing issue. A mix of skills will be brought together to support that aspect of the service. There will, however, be a resourced counselling service for people seeking to avail of the provisions in this legislation and it will be provided by Tusla.

Other speakers also raised the NCS. It provides a good counselling service. There is a discrete pathway into the service for survivors of these institutions. Regarding what Deputy Murnane O’Connor said, the number of people who have used the service so far - 158 - is not huge. We will consider how we can better advertise the existence of the service.

Deputy Mark Ward: I will make one final point on Tusla. Many people have contacted me raising concerns about the role of Tusla in this process. The Minister is aware of these concerns. In fairness to Tusla, when its representatives appeared before the committee, I found them to be very engaged with the process. Is work being done to address the concerns held by

some of those involved in this process about Tusla being involved in the counselling services? Will Tusla provide these services directly or will it contract another agency to provide them?

Deputy Roderic O’Gorman: There has been much criticism of Tusla in the past. Part of that was because Tusla was operating under the existing law, which is not suitable and does not allow the agency to provide much information. There have been problems regarding how Tusla’s social workers have engaged, particularly with adopted people and survivors of mother and baby homes. That was discussed in the context of people who were subject to illegal birth registration. I spoke to individuals about that. Most importantly, Bernard Gloster, the chief executive of Tusla, met people who had bad experiences with their social workers when the information about being illegally registered was conveyed to them and others who were seeking information about their adoption. Mr. Gloster has heard from those people directly. This has impacted on Tusla’s resourcing and its culture. I am confident that message has got through very clearly to Mr. Gloster and the upper management in Tusla. With additional resources, a legal structure that facilitates the organisation to release information and a changed culture, I think we can have a much better outcome for adopted people when they engage with these services.

Deputy Mark Ward: I thank the Minister.

Chairman: I will allow some members to contribute now for a second time.

Deputy Holly Cairns: It is great that people in NUIG are looking at the terminology. We will see what comes from that. I suggest the use of the term “mother” without anything before or after it. That might work. Regarding the concerns expressed by Deputy Cathal Crowe, and for anyone who may be watching, fathers are acknowledged in the Bill and have the same rights as mothers. One objection concerned the contact preference, meaning the adopted person would have to go for the compulsory information session.

Back in October, it seemed there was a consensus that GDPR applied and that EU laws were superior to Irish laws in this regard. That seemed to have been unanimously acknowledged. The Minister stated the Bill would restrict GDPR. Is that possible? He also said the Attorney General provided advice on this issue. Will the Minister share that advice with us? I ask because the only reason there can be an exemption in this context is if it can be shown to be necessary and proportionate. As Deputy Bacik pointed out, we are a complete outlier in a European context in this regard. Can such an exemption be shown to be necessary and proportionate? Is it possible to share the Attorney General’s advice or the reasoning informing this position with the committee?

Deputy Roderic O’Gorman: On the Deputy’s first question, I have tried to use the term “mother” in this engagement and in all my recent engagements on this matter. That is a useful suggestion. I refer to the issue of GDPR restriction. The reason we propose to restrict certain parts of GDPR under this legislation is to guarantee full and unrestricted right of access to the adopted person. If we do not provide some restriction of GDPR, a parent could object to the release of his or her information. This, in turn, could create a situation whereby an official in the AAI, Tusla, or my Department is required to undertake a balancing approach, which may result in the information being released. However, the policy behind this legislation is to provide for the release of information in every circumstance to the adopted person, and a requirement of that will be that certain GDPR rights of parents, such as the right to object and the right to the restriction of processing, will be limited. There is provision under GDPR for the limitation of rights within legislation, although limitations must be set out clearly. They will be set out

clearly in the text of the Bill and that will be done in a proportionate manner. If we do not do that, the situation will continue to arise where an adopted person's request for information can be refused when a parent objects.

On the question of the publication of advice, I think the Deputy knows the answer to that. It is not an answer she will like. We are not in a position to give the advice of the Attorney General to committees.

I hope I have explained the thinking behind the narrow restriction that will be very clearly articulated on the face of the Bill.

Deputy Holly Cairns: I thought it was the case that, sometimes, the Attorney General's advice is published, although I could be completely wrong in that; I am new to this process. Is the advice ever published?

Chairman: No, I do not think it is. It is just provided to the Government, as far as I am aware.

Deputy Holly Cairns: Once this legislation is in place, will adopted people still be able to make a subject access request to the Minister's Department, because the Bill only speaks to Tusla and the AAI? I see the Minister nodding in agreement.

Deputy Roderic O'Gorman: Yes, people will still be able to make a subject access request to my Department.

Deputy Holly Cairns: Is a data protection impact assessment being undertaken on the Bill?

Deputy Roderic O'Gorman: Yes, there is a live data protection impact assessment with the Bill. That will be shared when the final draft of the Bill is published. My officials will engage with the Data Protection Commission on that document.

Senator Mary Seery Kearney: I thank the Minister for, and appreciate, his comprehensive response to my question. I will come back to the second part of my question on the tracing issue. If the information meeting was supplied to everybody, thereby removing the element of it being a moot point going into the information meeting if one knows that he or she will be told it is a no-contact preference, it would also remove the potential for paternalistic allegations to be made by the recipients of their information that they are being singled out as having to be spoken to about privacy, while still observing the Constitution. That is just a suggestion and I do not expect the Minister to comment on that.

With regard to tracing, the definition of "relevant persons" clearly refers to the person who is the subject of the birth certificate and the surrounding information, as the person who will be entitled to apply for the information. Not providing mothers or siblings with the same right of access or entitlement, and by them being referred to only as tracing-only solutions, creates a difficulty where the information is incorrect. If I were a mother who gets to claim my file, within which I would get a sense of whether there have been unlawful or deliberately misleading recording of information, I would get an opportunity to identify that. I am concerned that there could be a gap within the tracing where the opportunity to identify that is not provided, if anyone other than the relevant person does not have access or if the definition of a relevant person is too narrow. What consideration has the Minister given to that aspect of tracing where there is inaccurate data to rely on?

Deputy Roderic O’Gorman: When a mother has a concern about the accuracy of information on a file, I believe that will be addressed through the existing processes and, in particular, the subject access request. I am aware there is a fear among some mothers that something inaccurate or, indeed, derogatory about them may have been put on their file at the time of the adoption about their own circumstances. There is an avenue to access that file through the subject access request and to correct that file through the right to rectification under GDPR. In terms of the rights of mothers, they can ensure that when their child seeks that file, something incorrect or untrue that might undermine the mother in the eyes of the child is not on the file, because they can have it rectified. That is why we are not looking to this legislation to address that issue because we believe it is provided for under GDPR. At present, mothers have access to their own file. I hope that answers the Senator’s question.

Senator Mary Seery Kearney: That is a good answer, to be fair, and it also complements head 40, which was the subject of Deputy Cairns’s question, in that due to a mother’s right under subject access request, the little-known other suite of rights under GDPR provides for the right to restrict processing. Therefore, this legislation must restrict that right of restriction in order for everybody to get information they require. When the time comes, we will need a lot of publicity and information on what rights everybody will have. We must not assume that people understand GDPR or know what their rights are on this subject. Providing that would be very helpful.

Deputy Ivana Bacik: I thank the Minister for his engagement with us, which has been constructive. On his point about the balancing of rights, he said this Bill would seek to flip the rights to ensure the identity and information are given priority over privacy rights and, therefore, it would use a different approach to the previous Bill. Unfortunately, there have been so many iterations of draft legislation on this that each one simply nudges the balance a little further towards information and identity and away from privacy. The difficulty for many of those who have made submissions to us, and for me, is that while a compulsory information session is retained, even for some of the applicants, that is still paternalistic in its approach and places a condition on the access. I entirely disagree with making it compulsory for all. The difficulty lies with the compulsory nature of it. It is my view, and I think the view of many, that the requisite-----

Deputy Roderic O’Gorman: I apologise for interrupting the Deputy. Her connection broke down while she was making what was, I presume, an important point. Would she mind repeating the last two or three sentences? I missed them entirely.

Senator Ivana Bacik: I raised the point about how we meet the balancing of rights. Our understanding of what is necessary to carry out that has clearly shifted over time because at one point it was thought the birth parent would require a veto in order for the balance to be constitutionally robust. It seems that now that an information session – the word “session” is a very unlegal word in the Bill – is compulsory only some is enough to meet the balance along with the other limitations. I disagree with having a meeting that is compulsory for all applicants. I think the Minister will agree it is the compulsory aspect of it that is problematic, creates the condition and is paternalistic. If we offered optional counselling or information to all applicants in the same way we are offering it to all birth parents, I believe that, along with the temporal limitation and the three-month period, would be sufficient elements of a mechanism to address the balance. When we first discussed this three-month publicity campaign some years ago, and I raised it with officials based on my experience of the Residential Institutions Redress Board, it was envisaged that that in itself was recognising and acknowledging there would be

women in particular who had given up children for adoption in circumstances of secrecy, who had never told anyone and whose privacy rights would be acknowledged through this three-month period and this publicity campaign. It seems to me that this is also an element of the mechanism to meet those rights. Why can we not move entirely away from the compulsory meeting aspect? Why can we not instead have compulsory provision of information through a booklet, certainly, and an offer of optional counselling or information, especially when there is no veto in any case? My final point about the three-month publicity process is that it is clearly aimed at publicity for all, that is, for adopted persons as well as birth parents. What happens if somebody comes forward after the three months? There is reference to that in the explanatory memorandum but that will probably have to be provided for in the provisions of the Bill itself.

Deputy Roderic O’Gorman: Yes, it will be provided for. If someone comes in after the three-month period and registers a no contact preference, or any preference, that will be put onto the contact preference register. Obviously, if somebody has sought information already, prior to that no contact preference being lodged, then that information will have been given out. This Bill goes further than nudging the balance. It flips it in that the result in every circumstance will be the provision of full and unredacted information. We should recognise the very significant jump and sea change this legislation brings about when compared to other measures.

I think the Deputy spoke about making the information and counselling sessions optional. Where a parent has clearly registered a no contact preference, the question is about the significance of what he or she has registered. Will it be regarded as an optional engagement? If the parent is conveyed with a booklet or something about what that preference means, will that be regarded by a court as being a sufficiently robust vindication of the right to privacy that the legislation will not be declared unconstitutional if it is challenged? During the engagement I have had in drafting this legislation, and I am thinking particularly of the advice of the Attorney General’s office, there has been a real concern that something of this magnitude will not be seen as a sufficiently robust protection of the right to privacy. It is a right, and I think we all recognise that it is a right. In this debate, we are giving precedence, and precedence in every circumstance, to the other right, namely the right to identity information. As we know, when constitutional rights are being balanced and one is being preferred over the other, the court must be satisfied there is a proportionate limitation of the privacy rights. We believe this mechanism demonstrates that degree of proportionality but always gives the adopted person access to the information at the end.

Deputy Jennifer Murnane O’Connor: I welcome the clarification regarding communication within three months of the enactment of this legislation. It is very important that when we speak about communication and we speak with our stakeholders, our message must be that it is inclusive. As we have visually impaired people, people with intellectual disabilities and people with literacy or hearing issues, our communication and awareness are really important. I ask the Minister to ensure it is very inclusive. It is important because I always feel it is an issue we need to address.

The other issue is whether the Minister is looking at a centralised agency at any stage to help to streamline the process for adopted people in accessing their own information. If he is, what would it look like?

Deputy Roderic O’Gorman: I take the Deputy’s point on the importance of the inclusivity of these information measures, particularly in that three-month period. It has to be recognised that the information is going to be addressed to people who are in their 80s and 90s, people who are 16 years of age and people who have different lives, many of whom are not in Ireland any

more. I absolutely bear that in mind. It is a really important point to make.

On the question of a centralised agency, as the Deputy knows last October there was a commitment to a records and memorial centre. This was repeated in the action plan. It would be a venue where we could bring together institutional archives of industrial schools, mother and baby institutions and Magdalen laundries so they can be accessed by researchers and individuals looking for access to their own files and used to explain this very dark part of our country's history. Work is beginning on that process. I hope to be able to announce something clearer in the next number of weeks on how that particular commitment within our action plan can be realised.

Chairman: Does Deputy Cairns want to add something very briefly?

Deputy Holly Cairns: I would like to raise something with the Minister that was prompted by Senator Seery Kearney's comments. When I was talking about how the GDPR restricts the Bill, I did not mean in relation to the mother's right to object but in relation to people being able to access their care information and information about their siblings. Given we all acknowledge that the GDPR does apply and that the European laws supersede the Irish ones, can this Bill actually restrict people's right to their care information and information about their siblings?

Deputy Roderic O'Gorman: This Bill is all about providing people with clear and guaranteed access to their care information and providing that access for the first time.

The really important issue of the next of kin has come up in many of the submissions that have come before this committee. We are engaging with the Attorney General's office and with the Office of the Parliamentary Counsel on what provisions can be provided with respect to access for various categories of next of kin. As Deputy Cairns said, under the legislation at the moment, we are proposing to tell people whether they had siblings - and if they had siblings, how many and what their gender was - but we are not proposing to provide names or direct information. I am aware that when the Data Protection Commission, DPC, made its submission, it flagged that there is an issue again in terms a balancing of rights because the name of a sibling is his or her private information. We cannot be sure that the sibling will want his or her identity revealed. I think the DPC said this would need to be looked at on a case-by-case basis, as other issues have to be looked at under the GDPR. We are engaging with the Office of the Attorney General on what can be done there. We are also engaging with his office on what can be done for the child of an adopted person when that adopted person has died; for example, whether that child can find information about his or her grandmother. I am aware that this issue that has come up before this committee. It is an issue I have experienced myself in the engagement I have had with survivors over the last year. Again, we are engaging on those points so I do not have any absolute clarity on that today. As the Bill comes through and the final draft comes before the Dáil, we will have clarity there. Obviously that can be teased out further on Committee Stage.

Chairman: I thank the Minister. If the Minister would like to make any additional points, there is time. I rushed him through some of the answers. If he wanted to make a few additional points before we finish, there is time for that.

Deputy Roderic O'Gorman: I thank the Chair. I thank all members for their detailed questions. We are all working together to try and achieve the best legislation possible but also legislation we can pass as quickly as possible in order that people can more easily benefit from the process.

I have addressed all of the issues but I would like to talk about the issue of illegal birth registration. As we know, the “Who Am I?” edition of “RTÉ Investigates” outlined the unique and awful difficulties this particular category of 141 individuals, as currently identified, are facing. We have engaged with them specifically. As I said, I have met a group of them. I have met individuals as well. They have given their feedback, in particular on section 7 of the Bill because it is particularly relevant to them. The majority - although I cannot say all - of the feedback from them has been positive. They see it as a way to address their situation, as well as of giving them the choice to have their identity registered as the person they would have been but for the illegal birth registration that took place. They can, therefore, choose to live their lives as the person they would have been. There is also the choice that I think the majority will make, which is that legal protection can be given to their identity that they have lived their entire life. There will not be a need in any contracts or in any declarations that they have made to change their identity documents, or anything like that. It is, therefore, a bespoke solution to a difficult and traumatic problem that has been landed on these people, following the revelation that they are subject to an illegal birth registration. While this applies to a small group of people, it is an important part of this legislation. It is in response to this issue. We set up an interdepartmental group in January to look at this when I announced the publication of the independent review. We have worked quickly to try to provide these solutions. The issue for these people is that they were told who they are not. However, they are not able to establish who they are. I hope that we will be able to resolve this issue for them this legislation is passed. We will be able to deal the wider issues of access to birth certificates, birth information, and early life information for all adopted people and for all people who were boarded out when this legislation is passed.

Chairman: I thank the Minister and his officials and all the members. It is great to see some people back in the committee rooms. It is great that we are getting back to that. Obviously, as we say with all of these meetings, we are in the process of going through this. We have had some meetings already and we still have more to come. I remind people of that as well.

Although it is a different topic, I wanted to tell the Minister that we are meeting representatives of the early years and childcare sector on Tuesday, 5 October 2021. We hope the Minister will be watching that meeting in advance of the budget.

Is it agreed to publish the opening statement to the Oireachtas website? Agreed. Again, I thank the Minister, his officials and members.

The joint committee adjourned at 5.13 p.m. until 3 p.m. on Tuesday, 5 October 2021.