



DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

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

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SEANAD ÉIREANN

Dé hAoine, 23 Deireadh Fómhair 2020

Friday, 23 October 2020

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

*Machnamh agus Paidir.
Reflection and Prayer.*

Teachtaireachtaí ón Dáil - Messages from Dáil

An Cathaoirleach: Dáil Éireann has passed the Railway Safety (Reporting and Investigation of Serious Accidents, Accidents and Incidents Involving Certain Railways) Bill 2020 on 22 October 2020, to which the agreement of Seanad Éireann is desired.

Dáil Éireann, on 22 October, has passed the Commission of Investigation (Mother and Baby Homes and certain related Matters) Records, and another Matter, Bill 2020, considered by virtue of Article 20.2.2° of the Constitution as a Bill initiated in Dáil Éireann, to which the agreement of Seanad Éireann is desired.

Dáil Éireann has passed the Residential Tenancies Bill 2020 on 22 October 2020, to which the agreement of Seanad Éireann is desired.

Parliamentary Precincts and Privilege: Motion

Senator Timmy Dooley: I move:

That, for the avoidance of doubt, office premises ordinarily occupied by staff of the Houses of the Oireachtas Commission shall be considered to form part of the parliamentary precincts for the purpose of the giving of evidence by witnesses, by means of such specified videoconferencing platform as may be approved and provided by the Houses of the Oireachtas Commission, to any Committee appointed by Seanad Éireann or by both Houses of the Oireachtas.

Question put and agreed to.

Railway Safety (Reporting and Investigation of Serious Accidents, Accidents and Incidents Involving Certain Railways) Bill 2020: Second Stage

Question proposed: “That the Bill be now read a Second Time.”

Minister for Transport (Deputy Eamon Ryan): I thank the House for the opportunity to introduce this Bill and for agreeing to take all Stages of the Bill today. This is an urgent Bill and I am seeking the support of the House to ensure its passage through the Oireachtas so that it can be enacted before 31 October this year. The sole purpose of the Bill is to provide a statutory basis for continuation of the powers of the railway accident investigation unit, RAIU, relating to the reporting and investigation of accidents, including the Luas light rail system, heritage railways and certain other categories of railway set out in the Bill. The RAIU is the independent statutory expert body that carries out all railway accident investigations in the State. If the Bill is not enacted before 31 October and in the event that there is an accident on or after that date involving the Luas or one of the other railway networks covered by the Bill, the RAIU will no longer have the power to investigate or report on that accident.

The reason this change is happening to the RAIU’s current range of powers is due to changes to the EU railway safety framework that are coming into force on 31 October. The EU railway safety directive 2004/49/EC established a common regulatory framework for railway safety across member states through the harmonisation of safety rules, certification, the role of national safety authorities and the investigation of accidents. Under that directive, all member states were required to establish an independent national investigation body, and to that end, the RAIU was established here. The 2004 directive applied to all categories of rail and the provisions relating to the investigation of accidents were transposed in Ireland by the European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014. These regulations are referred to in the Bill as the “Regulations of 2014.”

Under these regulations, the RAIU was given powers and functions in respect of all railways, including heavy rail, as in the Iarnród Éireann network, light rail, which includes the Luas, as well as other rail systems such as heritage railways metros and private railways. The 2004 EU railway safety directive is now being repealed, however, and it is being replaced by what is known as the recast railway safety directive, Directive EU (2016) 789. This directive takes effect from 31 October 2020. As a consequence of the repeal of the 2014 directive, the regulations of 2014, which were made under the European Communities Act 1972, will also cease to have effect on 31 October 2020.

The recast railway safety directive is part of a package of measures, known as the EU fourth railway package, which has the aims of promoting a single European rail market and achieving the technical interoperability of the Union railway system to support rail passenger and freight transport services. As a result of this, the recast railway safety directive has a reduced scope and it expressly excludes light railways, metros and other local railway systems. In the context of the railway systems in Ireland, it is only the railway operations on the Iarnród Éireann network, including the DART, that come within the scope of this new directive.

Last week, I made the European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2020. These are referred to in the Bill as the “Regulations of 2020.” These regulations transpose Chapter V of the recast railway safety directive, and provide the RAIU with renewed powers and functions in respect of report-

ing and investigating accidents on the heavy rail system. The regulations will take effect from 31 October 2020 to meet the EU transposition deadline and will replace the regulations of 2014 but, of course, they will only apply to heavy rail.

If no other measures are taken by 31 October 2020, there will, of course, be a gap in the legislation that would leave the RAIU without a statutory basis to investigate accidents involving any of Ireland's other railways, including the Luas and heritage railways. The measures in this Bill are aimed at preventing any such gap arising. The enactment of this Bill will allow the regulations of 2020 to be applied to all of those categories of railway, as well as to heavy rail.

Through the enactment of this Bill, the RAIU will be able to use the regulations of 2020 to carry out its full investigation functions, the same as it has always done in respect of the Luas light rail network and heritage railways and so on.

The Bill also contains necessary saver and continuity provisions that will mean that the current work of the RAIU can continue without interruption. This includes investigations that are under way at present or reports that are in preparation, as well as existing reports and safety recommendations.

The net effect will be that from 31 October 2020, through a combination of the regulations of 2020 and the enactment of this Bill, the *status quo* will be maintained in relation to the RAIU's powers for investigating and reporting on all railway accidents, including heavy rail, the Luas, metros and other railways such as heritage, tourist and privately owned railways.

While this Bill now needs to be brought through the Oireachtas as urgent legislation, efforts have been made to try to resolve the problem earlier. In 2018, legislative provisions to address this issue were included in the general scheme for a railway safety (amendment) Bill 2018. That Bill went as far as the pre-legislative scrutiny stage and was examined by the relevant Oireachtas joint committee in June 2018.

Since that time, however, despite various efforts, it has not been possible to make any further progress because of the demands of other priority legislation, including those related to Brexit. At the end of last year, the Department explored the option of attaching these provisions to some other priority legislation within the Department's remit that was close to being published and, at the same time, developed the provision into a single-issue Bill. Those options were effectively closed off, however, with the decision to call a general election and, since then, the ongoing impact of the Covid-19 pandemic has removed any opportunity for progressing the matter until now.

I will now give a short overview of the Bill's provisions.

Section 1 is a standard interpretation section. It provides definitions for the specific terms used in the Bill, and where these are existing terms under other Acts, the relevant cross references are given. Section 2 is also a standard provision and provides for the commencement of the proposed Act on 31 October 2020.

Section 3 on reporting and investigation of accidents is the main provision in the Bill. This section provides that the regulations of 2020 will apply to the other types of railway that are not included within the scope of the recast railway safety directive. These include metros, trams and other light railway systems, including the Luas. They also include privately owned rail networks used for freight, to the extent that those railways interface with public roads or

with another railway system. As Senators may be aware, there is one such railway currently operating in Ireland and that is the Bord na Móna network, which the company uses for its peat operations. Heritage railways are also included, and there are a number of these throughout the country, including in counties Clare, Donegal, Kerry, Laois, Leitrim and Waterford. The running of vintage steam trains on the Iarnród Éireann network is also covered.

Sections 4 to 6, inclusive, are also standard provisions. These seek to ensure the continuity of the reporting and investigation work that the RAIU has done to date and is continuing to do at present. Section 4 ensures that any investigation and the preparation of any report already commenced by the RAIU under the regulations of 2014 can continue and be completed under the regulations of 2020 from 31 October 2020. Section 5 ensures the continuity of existing investigation reports or other reports of the RAIU. Section 6 ensures the continuity of any relevant safety recommendation issued by the RAIU prior to 31 October 2020. Section 7 is a standard citation provision.

In conclusion, this is an important and urgent Bill to provide that the RAIU is provided with full statutory powers to enable it to continue, without interruption, to carry out reporting and investigation into accidents and incidents involving all railways. Again, I would like to thank the House for recognising the urgency attaching to the Bill and for agreeing to take all Stages in one day. I hope Senators will support the measures contained in the Bill and I look forward to hearing their views. I commend the Bill to the House.

Finally, I wish to inform Senators that the Government is putting forward a motion for earlier signature for this Bill. As explained, these measures need to be in place by 31 October if the RAIU is to be able to continue its important work without interruption, and an earlier signature is, therefore, considered appropriate and necessary.

Senator Timmy Dooley: I welcome the Minister to the House. Fianna Fáil is happy to support the legislation, which probably does not come as a big surprise to the Minister. We support it because it is technical in nature and is required due to the transposition of the EU directive that the Minister has identified. Like the Minister, I am somewhat concerned that it has taken so long to get the legislation to the House, and that we find ourselves in this emergency situation, considering that it has been around since 2004. However, I certainly do not think that any culpability can lie on the Minister's shoulders, on the basis of the amount that he has had to do since he got to the Department.

Under the changes to the directive, and without this Bill, the RAIU's scope would be limited, and some railways, including the Luas, as the Minister identified, would be excluded. Also excluded would be the West Clare Historical Railway in my constituency, which is one with which I am very familiar. I am also familiar with Jackie Whelan, who has done enormous work to recreate that historical dimension of the much loved and talked about railway. Therefore, it is important we show recognition to those particular facilities at this time.

We all have come to realise that the Luas has been a success. Its on-street activity and high visibility has assisted in that modal shift towards people leaving their cars behind and taking public transport. Therefore, it is important that we give recognition to that now.

Sadly, it is a fact of life that when a railway is put onto our streets, accidents happen, and they happen regularly. We should not be surprised about that. There is often a big furore when a Luas bumps into a car or a bus, but fender benders and little accidents happen daily when

there is on-street activity. In my view, it is a measure of the success of the Luas, that accidents happen, notwithstanding all the safety measures that are in place. It is important the RAIU is not inhibited in any way, and that requires us to pass the legislation without delay.

To broaden the point, and since the legislation is technical and there is broad agreement on it, I would like to say that I am reminded regularly, when I see the extent to which the State is responding to the pandemic and rightly spending colossal amounts of money, that those of us who advocated for greater investment in public transport down the years, were often rebuffed by the suggestion that the costs were so great that the State could not carry the burden. If one believes in something and accepts it is the right thing to do, money should and can be found to address, for example, the pandemic crisis, and rightly so. It is my view that money should have been found a long time ago to address the climate crisis that has been identified. The effects are not as obvious-----

An Cathaoirleach: I ask the Senator to stick to the Bill before the House, please.

Senator Timmy Dooley: I am digressing a little to broaden the point but I will conclude and bring it all back. The Cathaoirleach need not worry about that.

An Cathaoirleach: I will be interested to see how the Senator brings it all back.

Senator Timmy Dooley: I will try to bring it back on track as soon as possible. It is very important to continue our effort to invest substantial amounts of capital moneys in our infrastructure. Public transport is under pressure at present because of the necessity for separation and due to level 5 measures, we have been obliged to reduce to 25% the usage of the facilities but we should be looking to the medium term when we get to the other side of the pandemic. We need to look at electrification of our interurban routes and to get to much higher speeds between for example, Limerick and Dublin and Cork and Dublin. People can then get off the road and onto public transport and we can address, for once and for all, our overdependence on the burning of fossil fuels to power our public transport systems. If people see that as a State, we are serious about putting the infrastructure in place, they will continue with that modal shift. This will happen in the same way as the Luas got people out of their cars to a much greater extent than they ever would have, or did for the bus service. The introduction of the Luas has forced Dublin Bus, over time, to deliver a much better service and to put in place the sort of information points that enable people to know what time the bus is coming, with real-time information. This has sharpened everybody's pencil, so to speak, within the public transport systems which is all part of this.

In conclusion, I commend the Bill to the House. I hope that we can address the other deficits with the funding that is required. I also hope that the Minister will be back before us very shortly with more emergency legislation about the necessity to invest in infrastructure in places like Clare, where we should have a rail stop at Crusheen, and where we should be addressing the very significant flooding issues that cause the rail line between Limerick and Ennis to regularly flood at Ballycar, which has an impact on the flow of trains and always serves to undermine people's confidence in that network.

Senator Victor Boyhan: I thank the Cathaoirleach. I will not be using my five minutes as I am conscious that we are under a great deal of time pressure today. I am also conscious of other Members who have substantial issues they wish to bring to the debate.

While I am here, I will not miss the opportunity to welcome the Minister, Deputy Eamon

Ryan, the leader of the Green Party, here. It is the first time that I have seen him in the Senate at the same time as myself. I wish him well. I also wish to flag to him my deep concern about the ramming of legislation through the Houses and, in particular, this Bill. While I acknowledge that it is a short, concise and important Bill, I expect more from him and from the Green Party. I sat for many years at home and or in my office listening to two people up here at the back of the Chamber, namely, the Minister and Deputy Catherine Martin, who is a colleague, a friend and an able and capable politician. I heard the arguments and I played them back yesterday of where these Members were being left isolated and left out of the parliamentary democratic process. These are the Minister's own words not mine and I am just repeating them to him.

I do not have a difficulty supporting the principle of this Bill and I accept its importance but this is not something over which he can stand again. I appeal to him to use this opportunity to go back to his group, which people expect a great deal from and give support to, as I have also, and not to allow a situation where all Stages of legislation are rammed through. It does not sit comfortably with me nor do I believe it does with him. The Minister has that privilege and is the leader of his own party and is in government. He is one leg of the three-legged stool that is holding this Government together. Before I conclude, I ask him to use his important influence in the Government to put a halt to the abuse of the democratic process that we have had to endure in respect of the passage of the Forestry (Miscellaneous Provisions) Bill 2020 the week before last, over the past week it was the Commission of Investigation (Mother and Baby Homes and certain related Matters) Records, and another Matter, Bill 2020 and now it is this Bill. All these have happened on the watch of the Green Party with Ministers of the Green Party. I respectfully ask the Minister to take this point on board and I look forward, perhaps at another time, to having a discussion with him on these matters.

Senator John McGahon: The Railway Accident and Investigation Unit, RAIU, is the independent railway accident investigation organisation for Ireland. It deals essentially with investigations of incidents and accidents on the national railway network, including the DART, the Luas and industrial and heritage railways. An investigation is carried out for the improvement of railway safety thereafter, establishing the cause of the incidents with the ultimate view of producing safety recommendations that would effectively avoid similar types of accidents in the future. These investigations are entirely independent and are focused on railway safety improvement, which is the most important thing.

Since 2014, the railway accidents investigation powers for categories of rail are provided for in secondary legislation. We have enacted statutory instruments throughout this time. This Bill addresses the point that the RAIU will, from 31 October 2020, continue to have a statutory basis for accidents involving railways falling outside the new EU directive, that is, the Luas and heritage railways. We have a number of major sections within this Bill but one of the points I wish to discuss today is Project Ireland 2040 and how that can significantly influence our railway infrastructure on the island of Ireland.

I got the train from Dundalk to Dublin for many years. The investment of significant money in high-speed rail is part of Project Ireland 2040-----

An Cathaoirleach: I remind Members that when a Member is speaking in the House, they should not be communicating with others except by text which is not normally allowed but will be in these circumstances. Please continue, Senator, and I apologise for the interruption.

Senator John McGahon: I was discussing the issue of high-speed rail between the two

largest cities on this island, Belfast and Dublin. There are eight direct trains now between those two cities whereas, in comparison, places in the UK involving similar distances, like Liverpool and Manchester or Edinburgh or Glasgow, have between 22 and 32 trains a day. The first train to leave Belfast is at 7 a.m. It arrives in Dublin Connolly, at 8.50 a.m. If one is leaving Dundalk at the same time, it leaves at 8 a.m. and takes 55 minutes. Any train before that time leaving Drogheda, Dundalk or Newry, for example, takes an hour and 30 minutes to arrive. The reason for this delay is that there are so many commuter trains going into Connolly Station at the same time and it does not have the proper capacity. I would like to see a significant investment in high-speed rail infrastructure on the island of Ireland because, as Senator Dooley said a couple of minutes ago, that is one of the best ways to get people out of their cars, off the roads, and on to public transport.

In the context also of the many joint infrastructure projects we want to promote both North and South, these should be at the top of our list of priorities for investment and where we need to go with high-speed rail. It is the future. In terms of rail, we have seen this with the promotion of the M1 corridor in the north east. It is not about dragging everybody into a capital city, like Dublin. It is about providing the infrastructure in order that jobs can go both ways, whether that is a person from north Dublin commuting to a job in Newry or someone commuting to a job in Drogheda or Dundalk. It is about pulling jobs and investment outside of the capital so that we are not all being sucked into it. We do that by providing proper infrastructure, including proper rail infrastructure.

These were the points I wanted to make to the Minister today. This is the way forward and I am aware that Project Ireland 2040 puts great emphasis on it but if we want to make a meaningful commitment to decreasing commuter times and to increasing capacity on trains so we do not have scenes - we do not see them at present in these Covid-19 times - of significant overcrowding where people are sitting in alleyways on trains, then this is the way to go and high-speed rail has to be the future for the island of Ireland.

Senator Elisha McCallion: My apologies, a Chathaoirligh. I am sharing time with Senator Gavan.

I welcome the Minister into the Chamber, and having listened to him this morning and having read the Bill, he will be glad to hear that Sinn Féin is happy enough to facilitate the speedy passage of this Bill through the Seanad today.

That said, I concur with what has been said on the legislative process and the fact we have been forced to push through significant legislation over the past number of weeks. Given the loophole in which we find ourselves in relation to the new regulations from the EU, we are happy on this occasion to support today's Bill.

I record Sinn Féin's thanks to the Railway Accident Investigation Unit, RAIU, for the diligent way it conducts investigations into accidents. Its assistance ensures confidence in the public who use the service and the smooth running of the network. Public transport plays an increasing part in people's lives and many people look back in envy at the rail network that once flourished in Ireland but which over the decades was left to deteriorate and was replaced by the car, in particular. Now transport by train is being looked at with a fresh eye and rightly so. It has the benefits of getting commuters where they need to go, whether it be for work or pleasure, cheaply while making a significant contribution to protecting the environment, which I am sure Senators are all familiar with.

It is time this Government had a fresh look at its policy in relation to the rail network. Successive governments have neglected it and presided over a deteriorating service for many years. The deterioration is across the entire island. I listened to my colleague, Deputy O'Rourke, in the Dáil a few days ago when he said that 81% of people in his county of Meath work outside the county and commute daily by car because the rail infrastructure is in such neglect. I have often heard others reference, in particular, the total absence of rail network in the western region and my colleague, Deputy Mac Lochlainn, has referenced that on many occasions.

A few days ago, as the Minister will be aware, the Assembly in the North held a special meeting in relation to bringing rail infrastructure into the north west. My party colleagues, Martina Anderson and Karen Mullan, along with all the other political parties, backed a proposal to work with the Government of this State.

I welcome the announcement the Government made a few weeks ago on a feasibility study of the potential of high-speed rail going in from Derry to Cork. I look forward to working with the Minister and his officials on that and the sooner it starts the better. The stark reality faces us all in relation to the neglect, particularly in the north west. Derry's rail station is the second most isolated station on the entire island. The Minister has referenced the fact that we need to look at the possibility of bringing rail into the north west but I would like that work to be made concrete. The sooner that can happen, the better.

I will finish on that but I emphasise the need to ensure the piece of work the Minister has committed to doing becomes a reality. I look forward to working with him and his officials.

Senator Paul Gavan: I welcome the Minister; it is good to see him here. When we are talking about railway safety, investment is very much linked to that. As my colleague said, we will be supporting this important technical Bill.

I will highlight the situation in Limerick and, in particular the Ballybrophy-Castleconnell-Limerick line. The Government has invested in that line and upgraded the track but it has not given permission for the trains to go any faster. It still takes two hours to get to Ballybrophy from Limerick and it takes 40 minutes to go from my village, Castleconnell, to the city centre in Limerick. We need progress on that. It comes up in the headlines in terms of how much it costs each year for the taxpayer. The point is that if we get it right it will be a useful and progressive way of getting in and out of Limerick city, not just from County Limerick but from County Tipperary as well.

On a related point, this Bill covers light rail networks. Sinn Féin has championed the cause of the light rail network for Limerick. The reason is that Limerick is uniquely qualified because CIÉ still owns track right around the city. I am surprised we have not seen Green Party support so far for this initiative. I call on the Minister to investigate that because we are planning for the population to double in Limerick between 2020 and 2040. A light rail network is justified and we need to be ambitious for our city.

An Cathaoirleach: I thank the Senator and I call Senator Moynihan.

Senator Rebecca Moynihan: My party supports this Bill but we will not be speaking on it.

Senator Paddy Burke: I welcome the Minister to the House and wish him well in his portfolio. I have no doubt he has a huge interest in the railway network. Rail safety is a hugely important issue. I come from a county where we have had our fair share of tragedies at level

crossings over many years. Some of those level crossings have been upgraded to automated level crossings.

There is one in my area, Kilnageer crossing, between Belcarra and Castlebar, where a tragedy nearly happened a number of months ago. The community are up in arms in relation to work that should be carried out. They are looking for this to be either automated or the implementation of a scheme the council have put forward where traffic would go over the railway line. In any event, it will take a considerable period to carry out the works, particularly if it is roadworks or a bridge over the railway line. I cannot see why level crossings cannot be automated quite easily and I ask the Minister to look into this as a matter of urgency. I appreciate major strides have been made in recent decades automating many level crossings, particularly in County Mayo. We have a considerable rail network in the county from Westport to the Roscommon border and from Ballina to the Roscommon border. We hope the southern route will be extended from Athenry to Claremorris, which could take some time but it is something the Minister should look at.

I welcome the legislation. It is not before time that rail safety was made an issue. I wish the Minister well with the Bill.

Senator Michael McDowell: I welcome the Minister and congratulate him on his appointment. I have not had the opportunity to do that. This Bill is a technical one and deserves the support of the entire House. Two points occur to me. On cross-Border railway operations post-Brexit, will there be special arrangements for the extension of these EU powers or will this have any implications for that? I would like to hear the Minister on that. I will not ask him about metro underground. I will save that for a more relevant occasion. However, may I stray slightly into the area of irrelevance?

An Cathaoirleach: As it is Friday, we will let you.

Senator Michael McDowell: I was just warning the Cathaoirleach that I was about to do it.

I ask the Minister to look at the problems for emergency workers which are now being caused by the additional restriction of spaces on public transport at the moment and the hardship that is causing to nurses and people going to work. Is it really necessary as part of level 5 that the number of people able to travel on a bus is reduced by 50%? Is that an overreaction? It is causing much misery in Dublin for lower-paid workers who do not have their own transport and depend on public transport.

Senator Martin Conway: I welcome the Minister to the House and congratulate him on his appointment. I have found him to be extremely courteous over the years. I often felt he was ahead of his time in some of his ideas but now time has caught up with him and he has a great opportunity in government for the next three or four years to deliver on some of his great ideas. We look forward to exciting times ahead in that regard.

As somebody who does not drive because of my eyesight difficulties, I use Iarnród Éireann on weekly travelling to Dublin. I have got to know all the staff on the railways over the years and they do a fantastic job for Irish Rail and being ambassadors for our country with tourists. Since he took over as CEO of Irish Rail, Jim Meade, has made a significant difference and we see the work taking place at Limerick Junction which will speed up the times on the Cork to Dublin rail line.

In that vein, I concur with other speakers on the necessity to invest in rail. In terms of rail safety, the Department must upgrade the capital programme and buy out the network of level crossings in order to increase train speeds. The rail journey from Ennis to Galway takes about an hour and a half but it should not take so long. One will get from Ennis to Galway by bus a lot quicker. The problem is that there are many level crossings along that route which create speed restrictions. I would like the Minister to consider an investment programme aimed at taking over many of the level crossings on our railway network.

I also wish to refer to the Crusheen railway station campaign which has been ongoing for a long time in County Clare. Given that so many railway stations are automated now, there is no reason not to reopen the station at Crusheen. Perhaps the Minister could influence his Department which is not favourably disposed to this project.

I travel several times a week from Ennis to Limerick but for several months of the year every year, bus connections form part of that journey because of flooding at Ballycar. The Oireachtas committee dealing with rural affairs prepared a report on this some time ago and asked Clare County Council to come up with proposals to address it. There is an opportunity now for the Department with responsibility for transport to provide funding to carry out the necessary capital works to ensure that such flooding does not happen again. There is also logic in increasing the speed of trains travelling between Ennis and Limerick. That journey takes about 35 minutes but it should not take so long. Again, a capital investment programme to take over some of the level crossings on that route would address the issue. The train journey from Ennis to Limerick should be much quicker.

In terms of this legislation, rail safety is extremely important. It is worth pointing out that the railway network in this country is extremely safe. There have been incidents involving Luas trams periodically but overall our trains are very safe by international standards, with very few crashes. Full credit is due to Iarnród Éireann and the operators of Luas and the DART service. This legislation is important because safety should always be our number one priority and I know it is the priority of the team providing public transport in this country. I am glad to see that there is all-party support for this legislation.

Senator Róisín Garvey: Of course, it is very important to put safety first. In terms of light rail, heavy rail, walking, cycling and so on, everything must be safer. My own mother has stopped using trains because of the gap between the platform and the trains which frightens her. Perhaps we should look at that if it is proving prohibitive for older people because safety is key.

For too long we have been designing for cars. If one designs for cars, one gets cars which is why we still have gridlock in all of our major cities and towns. If one designs for people, one gets people and that is what we need now, more than ever. We need people back on our streets, in our villages and towns. I look forward to working with the Minister in his current role and I am really glad we have somebody in the role who understands transport.

We need to make the areas outside schools much safer. I worked with school children for 13 years trying to get them out of cars but sometimes they had no choice but to be driven everywhere all of the time. When people move around in a metal box, they are detached from everyone around them. We need to link up with people again. I know we have to think about Covid at the moment but we need to see each other at least. Travelling everywhere by car is not the solution, particularly in the context of rising obesity levels among children and adults in Ireland. We do not want to go the way of the USA which has become so car addicted that

people there consider those who walk anywhere to be freaks.

I really look forward to this being a positive time for the transport sector. I appeal to the Minister to make sure his Department ringfences proper funding for rural transport. It was mentioned in the programme for Government and the recent budget but it is not clear how much funding will be provided to rural transport providers including Local Link. That is key. I am speaking on behalf of people like my son who will never be able to afford car insurance, my elderly neighbours who do not drive anymore and people with disabilities. We need to consider them first because the rest of us have choices whereas they do not.

Another issue of concern is the lack of urban designers in most local authorities. We have road engineers who have a really important role but it is very different to designing spaces for people to move around, be it by car, truck, bike or on foot. We really need to review how we are designing our towns and villages. If we are going to invest in infrastructure, we must make sure it is done properly so that people can engage with other people, no matter what mode of transport they choose. I must commend Dublin which has done very well with regard to cycling infrastructure. I look forward to similarly amazing infrastructure being rolled out all across the country. I welcome the Bill before us and wish the Minister the best of luck with it.

Minister for Transport (Deputy Eamon Ryan): I will respond to some of the comments and questions. I thank Senators for their support for the Bill. Senator Dooley does not need to apologise for focusing on the local, be it in Crusheen, Ballycar or anywhere else because all politics is local and all safety is local. I assure the Senator that I will be looking at extending that line from Ennis up to Galway and not stopping at Athenry. Consider the potential if we develop a rail freight connection at Foynes and develop a section of rail from Athenry to Claremorris. That could open up the west of Ireland to enormous development opportunities. That line could carry freight as well as additional commuters and long-distance travellers.

I accept the point made by Senator Boyhan. It does not sit comfortably with me that we are presenting this Bill in the timeline set out. I have outlined the reason for that but that is not an excuse and I accept his point. We need to give the Oireachtas time to debate and consider legislation in detail, even technical Bills like this one. I will attempt to avoid similar circumstances arising in the future.

I absolutely agree with Senator McGahon on the issue of a high speed connection to Belfast and Derry. Our colleagues at the North-South Ministerial Council made the case for not stopping at Belfast but connecting on to Derry, which is important. We need to be really ambitious now because we have incredibly challenging climate change targets. They are beyond compare and will require us to radically change our entire transport system beyond anything anyone expects. Project Ireland 2040 is no longer an option; it will have to be Project 2050 and massive investment in sustainable modes of transport if we are going to do what we have committed to do, which is zero net emissions by 2050. I would love to hear how Senators think that might best be done. One of the projects for next year is working out how we will reach our targets. We will have to go way beyond Project Ireland 2040. We will have to draw up a new Project Ireland 2050 and net zero emissions and regional development, including the development of cities like Derry, would be centre-stage in my own ambitions.

In response to Senator Gavan, I would say the same about Limerick but would argue for heavy rather than light rail. The Foynes line is already in existence and Iarnród Éireann could develop it relatively quickly. We could put a station into Adare at the same time as building

the freight connection to Foynes. We could put stations in Patrickswell and Crescent and run the line right into the centre of Limerick. The Senator knows those areas which have growing populations. Such a development would transform Limerick.

Senator Paul Gavan: Hear, hear. Well said.

Deputy Eamon Ryan: There is nothing in the current plans for rail in Limerick and that has to change.

Senator Paul Gavan: The Minister is right.

Deputy Eamon Ryan: That is not agreed Government policy yet but it is certainly my policy. I hope we can get support for that from all parties because this does not belong to any one party.

In response to Senator Burke I again cite that section from Athenry to Claremorris. As I said when I was speaking in the Dáil on this Bill, the potential for freight connectivity is so important. In my mind the line will run from Ballina, if not Sligo, all the way down to Waterford which will open up the whole western region. I am talking here about a western rail corridor from Waterford through Tipperary, Limerick Junction and up through Clare, Galway and Mayo. It opens up the opportunity for us to go to the rest of the world and ask whether they are looking to invest in a location which has clean power, as the west has now with wind power, clean water, which is increasingly a rare resource in the world, world-class workers who are highly skilled in advanced manufacturing, pharmaceuticals, biomedical devices and industrial processing - we are world-leading experts on it - and key infrastructure connected to deep sea ports such as Foynes, Waterford and Cork. If we went out to the rest of the world with that as an investment proposal, I believe we would see the west rise with significant economic development opportunity. Those small sections between Foynes and Limerick and between Athenry and Claremorris would transform the system.

In response to Senator McDowell, the Department has been working for more than a year and a half to make sure post Brexit, irrespective of what happens in the negotiations in the coming weeks, we are confident we have the regulations and mechanisms in place so that cross-Border rail and bus journeys will be able to proceed.

The Senator's second point is valid and well made. We have seen, in the experience of people yesterday morning and again this morning, the real constraints when restricting public transport to 20% capacity. We are running full services. It is not a shortage of buses or a shortage of trains. On the Senator's behalf and on my own behalf, I will contact the National Transport Authority, NTA, later today for an updated assessment as to what is happening. There is a difficulty here. We are adhering to health protocols ahead of other objectives. The mathematics of that are such that sometimes one wonders.

Senator Michael McDowell: It is unfortunate.

Deputy Eamon Ryan: One could apply that to so many of the restrictions that are in place but we must heed the health advice. I will see if there are any ways in which we can improve. One of the ways of addressing it might be to stagger starting times. It would be an alternative way, particularly in the case of emergency workers who need to get there.

I was taken by Senator Conway's knowledge of the staff and his contact in his everyday

experience. I agree with the Senator. My sense of the staff, management and board of Iarnród Éireann, led by Mr. Jim Meade, the CEO, is that they are ready for this. What I am seeing is a huge call on them to step up to the plate. It is not only in Limerick. We should be looking in Cork, for example, Midleton to Cork, where we could put in a station in Tivoli which would be hugely beneficial to the development of Cork city. In Galway, for example, twin-tracking from Athenry into the city would see development concentrate in Ardaun and those areas where we could put housing beside new rail infrastructure. The whole key is transport-led development. In Waterford, I believe even moving the station further up the Suir to the north quays would transform the development of the city at a relatively low cost. It would see a significant transport-led development opportunity of the city of Waterford on either side of the Suir and that would be transformative. I would not stop there. There is real merit in the rail line to Navan and real merit in looking at further DART and metro extensions.

I say to Senator McDowell that we will not leave south Dublin alone. We are proceeding with a study looking at the extension of metro to either Rathfarnham through Terenure direction or else through UCD towards Sandyford which would address the capacity issues on the metro line and avoid problems having to dig that up which would close the line for two or three years. Every area needs to be considered, I believe, as part of expansion of rail in this country. That is why this legislation needs to go through.

Senator Martin Conway: What of Crusheen railway station?

An Cathaoirleach: I would ask Members not to interrupt the Minister, but all politics is local and I will allow it.

Deputy Eamon Ryan: There are three Clare Senators here and I do not want to be unfair to the others. Certainly, that is the sort of project we should look at. I am more concerned about Senator Garvey's mother and how we get her across the gap in the platform.

Senator Martin Conway: She is fit.

Senator Timmy Dooley: She is a formidable lady.

Deputy Eamon Ryan: It would take a lot to stop a Garvey making a jump.

Senator Timmy Dooley: It is not a plan anyway.

Deputy Eamon Ryan: Accessibility is everything. I was on the Dublin Transportation Office advisory committee for a number of years and the then director, Mr. John Henry, was a superb engineer. He and others always said if we design for accessibility, we improve the service for everyone. A disability can be a parent with a buggy and two children trying to figure out how to keep them from falling into a hole or whatever.

To go back to where I started with Senator Dooley, it is right down to the personal. This is one of the reasons we need this legislation. The Luas, on which there are regular accidents, is a great example of that because it was designed for accessibility in every way. Sometimes it is bit too accessible, but it works. It is hugely popular. The way forward is designing accessible public transport for all as part of the transportation we need. We need to make it safe. That is why I very much appreciate the messages of support for the legislation today.

Question put and agreed to.

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

Senator Timmy Dooley: Now.

An Cathaoirleach: Is that agreed? Agreed.

Railway Safety (Reporting and Investigation of Serious Accidents, Accidents and Incidents Involving Certain Railways) Bill 2020: Committee and Remaining Stages

Sections 1 to 7, inclusive, agreed to.

Title agreed to.

Bill reported without amendment.

An Cathaoirleach: When is it proposed to take the next Stage?

Senator Timmy Dooley: Now.

An Cathaoirleach: Is that agreed? Agreed.

Bill received for final consideration.

An Cathaoirleach: When is it proposed to take the next Stage?

Senator Timmy Dooley: Now.

An Cathaoirleach: Is that agreed? Agreed.

Question, "That the Bill do now pass", put and agreed to.

Railway Safety (Reporting and Investigation of Serious Accidents, Accidents and Incidents Involving Certain Railways) Bill 2020: Motion for Earlier Signature

Senator Timmy Dooley: I move:

That, pursuant to subsection 2° of section 2 of Article 25 of the Constitution, Seanad Éireann concurs with the Government in a request to the President to sign the Railway Safety (Reporting and Investigation of Serious Accidents, Accidents and Incidents Involving Certain Railways) Bill 2020 on a date which is earlier than the fifth day after the date on which the Bill shall have been presented to him.

Question put and agreed to.

Sitting suspended at 11.28 a.m. and resumed at 12 noon.

Residential Tenancies Bill 2020: Second Stage

Question proposed: "That the Bill be now read a Second Time."

Minister for Housing, Local Government and Heritage (Deputy Darragh O'Brien): I am grateful to this House and Dáil Éireann for facilitating the passage of this critical legislation through the Oireachtas. I am conscious that the Seanad has been given limited time to examine the Bill and table amendments for debate. As colleagues know, I am a strong supporter of the Upper House, having been leader of the Opposition here for five years - in the other Chamber, that is, rather than this one - and having voted against and defeated the Thirty-second Amendment of the Constitution (Abolition of Seanad Éireann) Bill 2013. I firmly believe that Seanad Éireann plays an important role in the democracy of our State.

I am asking Senators to pass the Residential Tenancies Bill 2020 to help mitigate the impact of Covid-19 on tenants and to support the Government's efforts in restricting the movement of people in order to suppress the spread of the virus. The front line of the struggle against the virus is in every house and community across our country. A safe and secure home has never been more important. The roof over our heads has become the limit of our social lives, the four walls of our homes our new work office, and the rails of our gardens and balconies our refuge from the pandemic. This challenging time for our country demands that we put aside party politics and ideology to work collectively for a common cause. It is a moment for politicians of all parties and none to stop letting their version of perfect be the enemy of what we can all agree is good.

In that light, I hope that every Senator and party supports this practical and urgent legislation. I am pleased to inform the Seanad that the Dáil passed the Bill unanimously last night. I welcome the support of those from all parties as well as Independents who contributed to the debate in the Dáil and, most importantly, supported the Bill's passage.

The Bill is committed to protecting tenants and recognising the rights of property owners in this deeply challenging time. It gives clear legal protections to tenants by effectively stopping evictions for the duration of the travel restrictions and adding a further ten-day grace period for the small number of people who may need to find new accommodation afterwards. It is a targeted and balanced measure to protect our shared public health interest by insulating tenants from any need to move beyond their homes during the travel restrictions. The temporary restrictions on property owners' constitutional property rights are justified on the basis of a broader social good.

It is important to recognise that the majority of tenancies do not end in dispute and the majority of our 170,000 landlords, most of whom own just one unit, act decently and fairly. The Bill is about providing unambiguous certainty to renters and landlords that their tenancies will be frozen during this emergency period. It is also necessary to provide for extreme and rare circumstances, such as severe anti-social behaviour, where landlords will need to act to protect their properties during the lockdown and protect neighbours beside the small number of unruly tenants.

The Government has a strong record of protecting tenants. The Emergency Measures in the Public Interest (Covid-19) Act 2020 was passed by the Oireachtas in March. Upon my request, a Government order to extend it to 1 August 2020 was put in place. I then introduced the Residential Tenancies and Valuation Act 2020 to provide further protections due to the pandemic's

economic ramifications, not just the public health considerations. That Act set out a new emergency period from 1 August 2020 until 10 January 2021 and was specifically focused on tenants economically impacted by Covid-19, in rent arrears and at risk of losing their tenancies. The Act was passed by the Houses, albeit not with the unanimous support we received last night. It is in place, however, and is a very important protection. Those tenants who make a necessary self-declaration cannot have their tenancies terminated prior to 11 January 2021 and no rent increase can apply for the period ending 10 January. The Act also introduced important permanent protections through new procedures requiring landlords to serve the Residential Tenancies Board, RTB, and the tenant with the 28-day warning notice seeking payment of rent arrears and a notice of termination.

These protections are working. Others have tried and continue to try to make little of them by twisting the numbers and claiming that the protections introduced in August are only helping a small number of people. This is simply not true. The legislation enacted in August will protect all those eligible and has done so successfully so far. That means any person whose income has been negatively impacted by Covid-19 and who is in arrears. Thankfully, as it stands, not many have had the need to apply for these protections due to the range of other measures and income supports that the State has brought in through its multibillion euro investment in our economy and society during this pandemic. That Act will continue to operate and deal with rent issues and it is independent of this Bill.

In the budget, in addition, I also increased the budget of the RTB by 22% to enable it to carry out its expanded duties fully and ensure a fair and equitable rental system. I have also increased funding to ramp up rental inspections and given extra money to local authorities to address overcrowding and inadequate accommodation. Ultimately, today's Bill is needed to help restrict movement in a unified, national effort by Government to address the resurgence of the Covid-19 pandemic. The disease demands our constant vigilance and our collective efforts and this Bill forms part of that endeavour.

The Bill introduces measures to protect tenants from tenancy termination in all but very limited circumstances during the current period of lockdown due to Covid-19. Importantly, it will also do if required during any future lockdowns where severe restrictions are imposed on people's movements. That hardwires this legislation directly to the Health Act 1947 and means these protections will kick straight back in should there be a further restriction of movements to 5 km. This is a strong and robust legislative protection. It will work, like the Act that I brought in August, which does work.

The Long Title of the Bill describes my policy aims and the policy context in which the limited restrictions on landlords' constitutionally-protected property rights are being introduced in the interests of the social good. Section 31A of the Health Act 1947 provides the Minister for Health with extensive regulation making powers to prevent, limit, minimise and slow the spread of Covid-19. Addressing unprecedented and grave circumstances, regulations under section 31A may provide for travel restrictions, prohibition or restriction of some events, such as large outside gatherings, for example, and the requirement that persons remain at home.

The provisions in this Bill will modify the operation of the Residential Tenancies Act 2004 during periods specified by the Minister for Health in regulations made by him under section 31A of the Health Act 1947 to restrict the movement of people outside a 5 km radius of their place of residence. Again, I stress that once the Minister for Health makes regulations restricting movement outside 5 km, these tenancy protections will kick in automatically. They will last

for as long as the health regulations are in force, and this includes the regulations currently in force by virtue of the provisions of the Residential Tenancies and Valuation Act 2020, to which I referred to earlier.

I will now outline the main provisions of the five sections of the Bill. Section 1 provides for the interpretation of certain terms in the Bill. Section 2 concerns the emergency period and it defines the period during which the temporary prohibition on tenancy terminations shall apply in an area. The period of time and the area in question shall be set out in the regulations made, as may be required, by the Minister for Health under section 31A of the Health Act 1947 to restrict, in a specified area, people's movements outside a 5 km radius of their homes.

Section 3 deals with notices of termination under the 2004 Act. Subject to subsection (2), it provides for a temporary prohibition on tenancy terminations taking effect in an area where section 31A health regulations apply to restrict the movements of people outside a 5 km radius of their homes. The duration of any emergency period shall not count as part of any termination notice period given. A revised termination date shall apply and should factor in an emergency period of an additional ten days. Subsection (2) disapplies temporary prohibition on tenancy prohibitions in cases of antisocial behaviour and where a rental property is being used other than as a dwelling and without the landlord's consent.

Section 4 provides that security of tenure rights shall not accrue to any tenant on foot of a delay in giving effect to a tenancy termination caused by the operation of section 3. Section 4, on the entitlement to remain in occupation of a dwelling during the emergency period, provides that where a tenant was served with a notice of termination prior to the emergency period and that notice period had expired but he or she remains in occupation on the commencement date of the emergency period, he or she is entitled to remain in occupation until ten days after the expiry of the emergency period, subject to the terms and conditions that applied under the tenancy. Section 5 provides for standard provisions regarding the Short Title to the Bill and provides for a collective citation. The Bill will commence upon enactment.

Several Deputies, Senators and NGOs have raised concerns in recent days, and last night, regarding local authority tenants and members of the Traveller community. I reassure this House that I again intend to give guidance to local authorities to ask them to neither terminate local authority tenancies, apart from in cases of severe antisocial behaviour, nor to move members of the Traveller community at this time, unless it is required to ameliorate hardship or for health and safety reasons. That will be done today. A circular from me will go to each local authority and that will be followed up by my team in the Custom House.

We will continue to monitor the situation and any need for additional advice or guidance will be addressed. This worked very well at the start of the pandemic and I thank our local authorities for their co-operation and for all the work they have been doing on the ground on our behalf. It is important that local authorities continue to manage tenancies during the Covid-19 pandemic and continue, where necessary, to use their powers under 2014 Act. That is particularly case in respect of dealing with antisocial behaviour, including the serving of a tenancy warning or an application to the District Court for a possession order. That can still take place in the context of severe antisocial or criminal behaviour.

As the Minister for Housing, Planning and Local Government, I know that at this time of great uncertainty, a safe and secure home is the best shelter from this storm. That is why I am asking Senators to pass this Bill without delay to help tenants to stay in their homes. I will seek

to respond to any specific questions or points raised at the conclusion of this debate. I ask the Senators, as I know they will, to approach the Bill with an open mind, good faith and the sense of urgency that this moment demands, as we are called to work together as a collective to overcome this cruel virus.

Acting Chairman (Senator John McGahon): As the Minister has to come back in at 1.14 p.m., we have exactly 56 minutes for our seven speakers who have asked to contribute. I ask them to stick to their speaking time of six minutes to ensure that everyone will get in. I call Senator Fitzpatrick.

Senator Mary Fitzpatrick: I am delighted to welcome the Minister and his officials and I thank him for bringing this important legislation before the House. As the Minister stated, there is nothing more important in any of our lives than to have a secure home and to have a place to call home. I am on the record as stating that after Covid-19, climate action and Brexit, I do not believe this Government has any bigger challenge than to address the housing crisis and the lost decade of housing delivery our country is struggling to overcome. I wish the Minister well with his challenge. I think that he has got off to a really good start and there is good energy and ambition regarding his plan. The €3.3 billion allocation in the budget for housing is warranted and we really need to see it delivered. The Minister and his Department have already put significant supports in place for renters, including the housing assistant payment, HAP, scheme, the rental accommodation scheme, RAS, and the emergency rent allowance. The Government is providing close to €1 billion under those supports, which is very important and appropriate.

The previous Bill the Minister introduced to protect renters from rent increases and evictions was welcome. While none of us likes Bills being rushed through the House or forced on us, we understand where the Minister is coming from in his approach to the legislation before us today. In an emergency, people need an emergency response from the Government. We support this well-balanced Bill which affords further protection for renters. Most renters are already availing of the protections that are in place but this Bill ensures those provisions can be used any time in the future when restrictions are activated or applied.

The Minister made an important point about antisocial behaviour. When most people are doing all they can to suppress the virus and behave as responsibly as possible, it is really upsetting to see antisocial behaviour at any level but particularly when it relates to people's homes. Parts of my constituency have home ownership rates of less than 10%. I know the Minister is going to help me to reverse that horrible trend. It is critical that everybody plays his or her part during this pandemic and that the State has the power to act, and does act, against those who do not. I commend the Minister on bringing this legislation forward swiftly. I hope that the House will support it and that we can move forward with the rest of our important business today.

Senator Michael McDowell: I welcome the Minister to the House. I agree with him that in the present situation, it is important that people should not be evicted in circumstances that are brought upon them by the pandemic or which make it difficult for them to secure alternative accommodation in the course of the crisis. If this involves the abridgement of landlords' rights to some extent, then, as the Minister outlined, the Constitution clearly indicates that property rights are not sacred and the common good must at all times be seen as something that delimits the total protection of property rights where there are adverse social consequences or implications for the common good.

The Minister has made his apologies for the way in which the Bill is being dealt with in the

House. I will not waste much time on that other than to state the simple fact that the business of this House is being reduced largely to rubber-stamping. It is happening on all fronts. The Minister has been very polite and kind in apologising for it in advance but I must say that there is a tendency to try to stop the legislative process from being fully operational and for the Executive to push forward legislation. There is time to consider a lot of issues and we must protect not our rights as Senators but our entitlement to carry out our duties as Senators, which include looking at all the proposals that are put before us and examining them carefully to see whether they will achieve their particular aims in a proportionate and balanced way, as claimed by the people who initiate Bills. Having said that, I appreciate the Minister's apology in advance for asking that all Stages be dealt with today.

One of the consequences of the Bill being dealt with this speedily is that I am denied the opportunity to tender an amendment I intended to propose to the next residential tenancies legislation to deal with the difficulty that now arises where landlords are charging rents that were unlawfully set in breach of the upper limits provided for rent pressure zone rentals. There is a difficulty in that the new regime the Minister has introduced of administrative penalties and investigations carried out by the Residential Tenancies Board depends on the applicability of something called "improper conduct", as defined in Schedule 2 to the 2004 Act, under Part 7A as inserted by the Residential Tenancies (Amendment) Act 2019. It appears there is a problem in respect of the exact application of these new procedures because the 2004 Act, as amended, refers to the setting of the rent being the improper conduct rather than the collection of the rent. The Act is very detailed and provides that the setting of rent is defined very clearly as taking place at the time when the rent is provided for or agreed rather than afterwards. There is a question as to whether the improper conduct applies to somebody who, historically, reached the rent pressure zone limits and whose only sin now is collecting the excessive rent. It is unclear whether Part 7A applies to that situation or not.

I had intended to put the matter beyond doubt by introducing an amendment making it very clear that it is not just somebody who sets the rent who engages in improper conduct but that anybody who continues to receive the rent or demand it should also be covered. However, because all Stages of the new Bill are being dealt with today, that opportunity does not arise. I ask the Minister to look very carefully at this issue. If it is the case that the powers of the Residential Tenancies Board to investigate such behaviour are limited to cases where the rent was set after those powers came into existence, but do not apply to the collection of the rent after the powers came into existence, then there is a loophole through which landlords who are greedy and are breaking the law may escape. It is a very arcane point but I intended dealing with it in an amendment as soon as the next available train left the station. Unfortunately, the train is leaving the station with no right for my particular carriage to be added to the back of it.

Senator Mary Seery Kearney: I welcome the Minister and the provisions he has brought forward in this Bill. It is a great initiative. It is not the preserve of the Opposition to be uncomfortable with rushed legislation and the perception that this House is being used for rubber-stamping. However, I appreciate that haste was necessary in this instance. This Bill and the Commission of Investigation (Mother and Baby Homes and certain related Matters) Records, and another Matter, Bill 2020 are two pieces of legislation in respect of which urgency is really understandable and with which I am in sympathy.

There is no doubt that the pandemic has caused terrible hardship and that action is needed to address the rental accommodation aspect. This Bill is very thorough and fair in balancing the rights of landlords and tenants. I thank the Minister for his clarification regarding local au-

thorities and Traveller accommodation. However, there is another area on which I seek comfort from the Minister, concerning the rent-a-room relief scheme. I understand it was also raised during the debate in the Dáil. I am supporting a family in an equal status claim where the main breadwinner is without any income due to the pandemic circumstances. This individual had the initiative to seek support from the State and found that she qualified for the HAP scheme. However, when she brought this happy news to her landlord, the latter recoiled and, all of a sudden, manufactured a daughter who needed accommodation and served notice on the sitting tenant. There was a big hoo-ha. The notice has since been withdrawn because there are errors on the face of it and the tenant is now back at the beginning of the process. In the meantime, I have had a chance to look at the matter in the context of the provisions and protections available under the Equal Status Acts. The accommodation in question is a self-contained apartment adjacent to where the landlord lives. When we get to the point of discussing the situation under the Act, his defence will undoubtedly be that it is a rent-a-room situation because of his proximity. Obviously, my argument will be contrary to that. There is photographic evidence and I have gone to the apartment to see it, so I would disagree. However, there is some concern about whether people like the woman in question are afforded the same protections under this Bill. If someone is prohibited under the Bill from going to look for somewhere else to live because of the pandemic, that should apply to everyone in the vulnerable tenant category. I would welcome the Minister's clarification of this issue.

I welcome the budget, which builds on the annual increases of recent years in the amount of State-provided social and affordable housing. The budget is ambitious and will be an excellent relief. Thankfully, there was money to pursue it. I acknowledge how fantastic it is and congratulate the Minister on same. He is building on the years of work done by his predecessor.

Whatever we do, we will rely on a private rented sector. It will always be with us. The issue of landlords was mentioned. The word "landlord" is not a dirty word. There are people involved who are there by accident and others who have invested as an alternative to pension schemes. While we need to support tenants' right to longer tenancies and give them better benefits, we also need to consider the reliefs for landlords. I have been on both sides before the RTB in a *pro bono* capacity and hardships are experienced by tenants and landlords. I urge the Minister to bring his considerations on this issue to the Oireachtas Joint Committee on Housing, Local Government and Heritage so that we can have a good debate on how to balance both sets of property rights.

I have encountered a couple of peculiarities in recent weeks. I believe the Minister has addressed them, but perhaps there has been a miscommunication with some local authorities. I am not sure how that situation arose, but I will outline the peculiarities so that the Minister can issue a clarification. People can be struck off the housing list because they did not receive a letter. I have two such cases ongoing. They were suddenly struck off the housing list after it was claimed that a letter had gone out to them and they had not responded to it. There should be a greater onus and burden of proof on the local authority before someone who has rightfully been on a housing list for years has that position removed from him or her.

I am dealing with another situation where a person is repeatedly being told by the local authority that they must be homeless before it will engage with that person. I had believed we had dealt with this issue and were trying to stop homelessness from happening early on, so the idea that a local authority is telling people that they must only approach it when they are homeless seems to undermine the supports and other measures we have introduced.

I have covered everything I was going to say, but I will also ask for the RTB to be resourced. I thank the Minister for the provisions he is making in that regard. He should do so as a matter of urgency, be it in terms of recruitment or whatever, given that there appear to be delays in accessing services.

I commend the Bill.

Senator Malcolm Byrne: I thank the Minister for attending to debate this urgent legislation. I share the views of colleagues that a number of Bills have been rushed through the House, some unnecessarily so. In this case, however, it is welcome. The Minister is deeply committed. I have known him a long time. He is willing to listen on all of these issues and I am sure he will listen to the concerns expressed on all sides.

I support this legislation strongly. It gives certainty to tenants during this difficult period and any future period. In that way, the Minister will not need to revert to the House time and again to introduce more emergency legislation.

It is all very well talking about providing protections for tenants and so on, but I welcome in particular the budget allocation of €10 million to local authorities for the rental inspections programme. This will be of considerable help to them in ensuring that the regulations on standards are met. There has also been a €2 million increase in funding for the RTB. We can have all the regulations possible, but not having the resources and staff to ensure they are adhered to has posed a challenge for a long time, particularly for local authorities.

I agree with Senator Seery Kearney about the rent-a-room issue. I was going to ask about tenants in private homes. Some clarity is required.

I hope that the Bill will be enacted. When it is, I ask that its impact be communicated clearly to tenants and landlords in understandable English and in a number of other languages, for example, Polish, Lithuanian and Latvian, for tenants and landlords whose first language is not English.

Sometimes, there is an image that this country is full of rogue landlords with lots of properties who just want to attack tenants. That needs to be challenged. More than 70% of landlords have just one property. They are often accidental landlords, for example, two individuals who had their own properties and came together to live in one, leaving one to spare. Certainly, there are rogue landlords exploiting tenants. I agree with Senator McDowell. When the next train comes into the station, which I am sure will be soon, we should address those landlords who are skirting around the legislation, particularly in terms of rent pressure zones, RPZs. Equally, we should address the problem of rogue tenants. A small number of tenants leave properties in an appalling state and at enormous cost to the landlords. Generally, it is one-property landlords who must bear the cost. As such, I am glad that the Bill's ban on evictions does not apply to those tenants who are engaged in criminal or antisocial behaviour. It would be unfair if they were able to have the protections provided by this legislation.

As the Minister knows, the main challenge on the rental side relates to supply. We are introducing many measures to protect tenants and so on, but the reason our rents are so high is because of the lack of supply. The Minister and I have discussed this matter regularly. Our key priority as a Government must be the delivery of affordable housing. We have to be able to deliver affordable housing. It remains ridiculous that, in almost any part of the country, someone who is renting can get a mortgage for less than his or her rent. I come from Gorey, where rent

for a three-bedroom house costs in the order of €1,200 to €1,250 per month but a mortgage costs significantly less. It is the Minister's personal priority that we must help all of those individuals and couples who are aspiring to own their own homes. That must be the main priority for housing. If we can address the supply of affordable housing and allow access for individuals to same, many of the challenges that we are facing in the rental sector can be resolved.

I welcome the Minister's intentions in the Bill. I support the Bill. I ask that he take on board the importance of communicating its provisions, in particular multilingually.

Acting Chairman (Senator John McGahon): I apologise to Senators Warfield and Moynihan for calling Senator Byrne before those two spokespersons.

Senator Fintan Warfield: I welcome the Minister to the House for the first time. It is an important recognition of the crisis facing renters that he is present. I will support the Bill but I want the Minister to listen very closely to what I have to say. We will support any Bill that protects renters. It is regrettable that only in unprecedented uncertainty are we seeing proper protections being introduced. I know many people in this city and beyond who are in rental accommodation and have felt uncertainty for very many years. This legislation is welcome but it does not go far enough. If we are all in agreement that renters need protection, especially now, why should we limit this protection to seven weeks? We need more than this and renters need more than this.

The Government's national framework for living with Covid-19 states we could be living with the virus well into 2021. I think that is a certainty. Why did we not seize the opportunity and draw up an all-encompassing Bill that actually protects renters and avoids this nonsense of going in and out of emergency periods, introduce a ban on evictions or support the proposal we have today that gives people certainty and peace of mind? The old way is out the window. It is not as though landlords will not have protections either. They will have protections in terms of antisocial behaviour or illegal activity and Part 4 is being paused. This is not just a one-way street.

If there were no Covid-19, there would still definitely be a rental crisis. Rents continue to rise, albeit at a slower rate than previous years. The latest *daft.ie* rent report, for the third quarter of this year, shows the average rent in the State is €1,412, while in Dublin the average rent is €2,030. This represents an annual increase of 1% and 0.2%, respectively, on the third quarter of 2019.

The Minister has spoken about his record. Only a few weeks ago, very regressive legislation, the Residential Tenancies and Valuation Act 2020, was implemented. This legislation only adds to the problem. Threshold has confirmed that, as a result, it is now dealing with a significant increase in cases and queries regarding evictions, and we have seen illegal evictions in this city. Today, we have further legislation drawn up by hard-working officials that goes in the right direction but does not go far enough. For our part, Sinn Féin will keep calling for a freeze on and reduction in rents, a ban on evictions and latent defects in housing to be addressed. We continually push for more social and affordable housing. We want renters, many of whom spend half of their salary on an asset they will never own, to have security, dignity and freedom. This is achievable. If the Minister and his predecessors had agreed to many of our housing Bills in the past, this could have been done without him having to lift a finger. If the Covid-19 pandemic is the reasoning behind this emergency legislation, I must mention the Minister's rejection, and that of Fine Gael and the Green Party, of legislation last night that would

have banned co-living. Co-living is the worst possible type of accommodation to live in under the threat of Covid-19. It is accepted we may live with this virus well into next year. There may well be co-living developments completed by then with people living in them. Has the Minister told NPHET or the HSE they can expect hundreds of people sharing kitchens and bathroom facilities next year? Has he looked at other major cities that have experimented with co-living?

The amendment I want to focus on primarily today, which Sinn Féin will put forward, is to extend the ban on evictions to six months, well beyond the January date when the current financial protections run out. On a side note, why is January a terrible month? Is it because we have eaten chocolate for all of Christmas? Is it because the weather is rubbish? No, it is because people have no money in their pockets. Does the Minister put himself in the shoes of renters when introducing these types of protections? We support the call from the Simon Community to introduce this amendment providing for a six-month ban on evictions. We are happy to see many other parties and groupings supporting it and perhaps the Green Party will explain to us how refusing to support a six-month ban on evictions fulfils its election promises of looking after renters.

In recent days, we have heard the HSE and the Government ask for understanding from the public as they sought to press the reset button on the contact tracing system. The Minister should know that Ireland is in dire need of a reset for the rental market. We see the six-month ban as primarily helping those people renting to give them certainty and relieve some of the worry and anxiety. The six-month period would also give plenty of time for us to consider how we can give certainty and respite to hard-pressed renters. One of our amendments seeks to include those people who rent rooms on an *ad hoc* or informal basis. This has been mentioned by Senators Seery Kearney and Byrne. I hope the Minister will support amendment No. 1 given his statements today.

On a procedural note, this is the second time today that Senators had to submit amendments to Bills before the legislation was finished in the Dáil. That is completely unacceptable. I support the Bill but it does not go far enough and we will indicate this through amendments. We should address the crisis once and for all instead of periodically introducing holding legislation that always seems to aim to do the least amount possible.

Senator Rebecca Moynihan: I thank the Minister for coming to the House. The Labour Party will vote in favour of the Bill because we believe the eviction ban should be extended but we do not believe the Bill has gone far enough. I have tabled an amendment extending the eviction ban to at least March, allowing the ban to be enforced when any limit is put on movement and allowing the ban when people are allowed only to travel within their county. The Minister served the constituency, but some would say county, of Fingal. If people in Fingal were to lose their house and be evicted, it might not just be Fingal where they would look for available properties. They might also look at counties Louth and Meath. It is important, if we go to level 3 and are limited to travel within counties, that evictions would not be allowable.

The virus will not magically go away within seven weeks and in all likelihood we will be back here again after Christmas. The Labour Party and other parties tabled amendments in July that would have dealt with these issues and allowed the Minister to extend the eviction ban based on his own judgment. It would have avoided unnecessary stress for renters about losing their home in the middle of a pandemic. There is every chance that somebody who was evicted in August will not yet have found alternative accommodation. The degree of uncertainty is not fair to renters who, as well as living through a pandemic, are living in a country that has some of

the worst protections for renters and face the threat of being evicted on loose grounds. We also have an underresourced Residential Tenancies Board, RTB. I am glad the Minister, through the budget, has addressed some of the RTB's underresourcing to enable it to deal with some complaints. I expect the position to improve next year.

When the seven-week period is up, evictions will occur. There have been evictions since August. They started after the previous protections were abolished by the Government. I will give the House a flavour of some of the cases I have dealt with. One involved a mother living in two-bedroom accommodation with her son who is in a wheelchair. She is in receipt of the homeless housing assistance payment. The family had been in emergency accommodation but had been given notice until the end of October and are now nearing the end of that notice. They have found a new place but it is much more expensive.

In another case, residents of a house with 12 units were served with notice before the previous eviction ban by the family of the deceased landlord. They are ignoring the terms of the suspension notice since the previous eviction ban. This case has gone to the RTB but one resident is concerned that she will be homeless before the RTB case is heard.

The landlord of a family of six, who have spent nine years in the house and 11 years on the council waiting list, has stated he is planning to sell the house in the new year. This family should not be still fighting to get a permanent home after such a long time on the waiting list. When the family transferred from rent allowance to the housing assistance payment from rent allowance, they were moved backwards on the list.

In another case, a landlord is refusing to extend the tenancy of a person in receipt of the housing assistance payment. This case involves a single mother and her daughter. The landlord constantly visits the property. The family have nowhere to go and they feel they are being harassed to leave the accommodation. They are living in very poor conditions.

Another case involves a working family. Both parents are from abroad and they have one small child. They now live in new accommodation after being asked to leave by the landlord. The notice they were given was much shorter than is legal required and they were told this was because the property was being zoned. They left the property unaware of the rights they had.

Between 2 August and 24 September, the RTB was notified of 753 warning letters issued by landlords. Threshold reported in September that 128 tenants received an invalid notice of termination from their landlords, meaning approximately 56% of notices that went to Threshold were invalid. Threshold tells me that this is high compared with normal standards. No-fault evictions and evictions for very wide circles of family members returned in the middle of a pandemic. Evictions to allow for a potential sale at a future point returned in the middle of a pandemic, as did evictions to allow for substantial renovations.

This Bill links protections for renters with movements being restricted to a 5 km radius because the Minister, on legal advice, considers any moratorium on evictions to be vulnerable to constitutional challenge, as he has repeatedly emphasised. This idea has not really been tested in the recent past. He said that such measures are only constitutionally permissible when there are restrictions on movement. There is much discussion about taking personal responsibility for dealing with the spread of the virus. We have limits on movement, on social interaction, on seeing our families and on our ability to protest. So much of what we have taken for granted has been constricted by legislation and penalties, more of which we will be considering in the

House this afternoon. That is fine because we are all in a fight against this global pandemic. What I do not understand, however, is why private property rights seem to be sacrosanct during the pandemic with regard to the ending of the eviction ban. We are all playing our part and putting our lives on hold to fight this virus. Landlords and property owners must also do so.

The Government is leaving families open to eviction from their homes a few weeks before Christmas in the middle of a pandemic. We know that evictions in the private rented sector are one of the main contributors to family homelessness. The Taoiseach has emphasised that, when level 5 restrictions lapse, the Government intends to move the whole country to level 3. Movement will be restricted for cocooners and those living with underlying restrictions. They may be forced out of their homes and our amendment seeks to address this. The priority of the Labour Party and the Opposition in the Seanad is to keep people safe and in their homes. That is why we are tabling these amendments today.

Senator Alice-Mary Higgins: While I agree with Senator Byrne on some issues, I would query one thing he said, which was the ultimate priority is still for people to own their own homes. That is one priority but the core priority of the State must be for people to have security in their homes rather than ownership. This goes right back to Davitt. Security of tenure allows people to plan their lives, decide what school their children will attend while knowing they will live near it, plan for work, have a life and know where they will live. Even if one never owns the property, one can plan one's life in a given place. Generations of people grew up in local authority housing and their children had that security, went to school and went on to do many different things. It is about security of tenure and security of life. That is an ongoing issue. That crisis was an issue during the elections, before this pandemic. The issue of security in one's home has been intensified by the pandemic because it became, potentially, an issue of life and death. It became an issue of safety. That became a concern.

We initially had an eviction ban followed by the measures to which we moved over the summer, which diluted that blanket protection and restricted them only to those who had been specifically hit by the crisis and who were in receipt of Covid payments and to those in local authority housing. These measures did not continue the security needed for all those who were already extraordinarily vulnerable and who already did not have security. I refer to those who were in receipt of the housing assistance payment, HAP, and those who were already unemployed and who may not have been entitled to the Covid payment because they were already struggling. That is a very large cohort of people who started getting eviction notices in August. There were cases of persons who were already on low incomes, and who stayed on those low incomes and were struggling, being served with eviction notices. It is extremely hard for them to find accommodation. I know because I have been contacted by people who have been looking for places to rent or to stay in since August. It is a very difficult time to be searching for accommodation and housing.

I will, of course, support the Bill and I am glad to see a blanket measure introduced for the six weeks, but the concerns I have raised are ongoing. There needs to be wider measures because, as has been mentioned, residential tenancies Bills always come through in a great rush and do one thing. Hope for a proper debate was expressed. I have tabled an amendment, which I hope the Minister will accept, which guarantees full and proper debate on the Bill and all of the issues relating to it, including the misuse of the refurbishment provisions, which it is crucial to address if we want to increase the volume of retrofitting in the coming period. We also need to discuss protections for those with Part 4 tenancies and other issues, many of which have been spoken about by others in the House. We need robust discussion on these matters but, in the

interim and in the medium term, I have tried to insert an amendment to guarantee such proper discussion with regard to this Bill.

We also need to deal with the fact that this provision will expire in early December. We will be coming into Christmas, a period in which people do not have a lot of financial liquidity, and into January which is, as has been said, a very difficult time. I have tabled an amendment which seeks to deal with a big concern I had with the legislation about which we spoke previously. I refer to the matter of the 28 days of arrears and the 28 days to pay. These need to be increased to 60 days as 28 days is just not long enough. These periods are part of the general provisions and relate to the non-payment of arrears as a basis for eviction. This is subsequent to the six weeks. It needs to be increased to 60 days. People may easily build up 28 days of arrears in December and January and will really struggle to find the money to repay those arrears within 28 days. That is another measure that could be introduced to deal with this difficult time.

I have also suggested other measures. I completely support the extension of the eviction ban for six months and the measures proposed by Sinn Féin. I will also be actively supporting the measures proposed by the Labour Party with regard to restriction of movement, even at county level. While I prefer the Labour Party's amendment and its wider interpretation of the restriction of movement, I have proposed a milder amendment. My amendment simply applies to any restriction within 20 km. While the city is often the focus, evictions also take place, and housing insecurity is also present, in rural areas. In these areas, a radius of 20 km allows for quite a narrow field in which to hunt for a new home. We have had restrictions to 20 km in the past. If level 3 is introduced, but with a 20 km restriction, I want the Minister to have the power to operate this ban. I ask that this be changed in the Bill and that the Minister indicate how he might otherwise extend this provision in those circumstances through a statutory instrument.

Acting Chairman (Senator John McGahon): We have 16 minutes remaining and a number of speakers indicating. Senators Cummins and Kyne have kindly agreed to share time, with three minutes each. Are Senators Crowe and O'Loughlin also willing to share time with three minutes each?

Senator Fiona O'Loughlin: Yes.

Acting Chairman (Senator John McGahon): Excellent.

Senator John Cummins: I welcome the Minister to the House and thank him and his officials for the speed with which they have worked on this legislation, which is exceptionally important to protect people from evictions during this emergency period and any subsequent emergency periods that may arise. I am sure that, in his response to some Opposition Members, he will defend the Bill against some of the charges levelled and explain the reasons for linking this provision to the 5 km restriction via the section 31A of the Health Act 1947. This 5 km is provided for in primary legislation or in regulations and the provision must be linked to something of that sort, as the Minister's officials briefed us during the week.

I compliment the Minister on the antisocial behaviour clause in the legislation. This is welcome. As Senator Byrne has said, there are instances of antisocial behaviour and we must ultimately still be able to deal with these despite this pandemic. It is often the accidental landlords who are left with problems in this regard. It is all about striking a balance.

This legislation does this by safeguarding the rights of tenants during this emergency period

and subsequent periods and the right of landlords to protect their property. The addition of the ten-day grace period when the measure elapses after six weeks is welcome as it will give tenants who were at the end of their notice period sufficient additional time to source alternative accommodation.

Some Members mentioned the resourcing of the Residential Tenancies Board. I compliment the Minister on the much needed additional resourcing provided for the RTB. What additional resources and staffing will be provided?

The issue of the affordable and cost rental housing will be discussed shortly. The Government will ultimately be judged on the provision of affordable housing. The Minister's officials should consider running an awareness campaign to highlight the additional 5% to 10% provision in the help-to-buy scheme and the Rebuilding Ireland home loan scheme. Many people are not aware those fantastic measures are available to help people to get their foot on the housing market ladder. I ask the Minister to take up that suggestion.

Senator Seán Kyne: I welcome the Minister and congratulate him on his appointment. This is important legislation in affording protection to tenants. Being a tenant can be stressful at the best of times, particularly where the supply of accommodation is limited, but at this time we also have a health crisis. These protections are important, as are those enacted for tenants by the previous Government.

As previous speakers stated, there are rogue landlords and rogue tenants. Thankfully, the majority are good landlords and law abiding tenants. My wife is an accidental landlord as she is an only child and both her parents have passed away. I would like to think she is a good landlord and, thankfully, she has had good tenants. We only hear about the minority of difficult cases. That is understandable because the system works well in general. Where it does not work well is where the difficulties arise.

I agree with Senator Seery Kearney regarding people on the housing list. Many people contact my office who are not sure if they are on the list and who were on the list and have since changed their address and wonder if they are still on the list. We have added complications in Galway city and county because we have two lists. Some people who come from the city may have a preference to live in the county or *vice versa*, which can cause problems.

Will the Minister consider the issue of former commercial properties? I know of cases where it is very difficult and expensive for people who have a good property that was commercial and is ready to go but the process is extremely convoluted and costly. I know an individual who has spent thousands to reach to the stage where an application to convert a property's use has been rejected again by the city council.

There are approximately 3,500 HAP tenancies in Galway county. A small number of landlords have issues with their HAP tenants. One individual who contacted me and other public representatives has not been paid rent since last November. The landlord has gone through the process, has secured a valid notice of termination for failure to pay rent and antisocial behaviour prior to Covid-19 and the tenants have received a termination order. That landlord has not received any money from Galway County Council. The Minister has been approached about this case. The landlord has been out of pocket since last November and the tenants are still in the property. I ask that the Minister examine this case.

Senator Sharon Keogan: The Minister is welcome to the House. I wish him well in his

portfolio. He has taken on the role with gusto. I believe he will make changes to affordable and social housing and I have great confidence in him.

I will support the Bill and a number of the proposed amendments. While it gives certainty to those who are renting and bans evictions, my main concern is the ten-day grace period, which is simply not sufficient as we approach Christmas. Many families are very fearful as we face into the level 5 restrictions. Some will have the prospect of eviction hanging over their heads and will only have a ten-day grace period following the lifting of the restrictions as we approach Christmas. We could have done a little better on that. I am not sure if the Minister will accept any of the amendments but I will support a number of them.

The proposal to have the measures kick in again if the 5 km restriction on travel is reintroduced should be reviewed. I would welcome an extension of that provision to 20 km.

We have 3,400 children and 10,500 people living in homeless accommodation. This is an uncertain time for them. I ask the Minister to advise us on how he plans to deal with that issue. During the previous lockdown, homeless figures decreased. I am sure the Minister has a plan to deal with this issue and I would like to hear it.

Senator Ollie Crowe: I congratulate the Minister, Deputy O'Brien, on his appointment and wish him well in his role. He has hit the ground running in recent months. He has been a great support to me since I entered this House. I have great confidence in him and I know he will deliver social and affordable housing in Galway and throughout the country.

I welcome the Bill. I am delighted there is cross-party support for it in the House. I understand the Minister will correct the record regarding a number of issues that need to be confirmed.

I will address a few issues raised by previous speakers. I thank the Minister for supporting the position that Galway City Council and Galway County Council should not be merged, which he expressed to me at a meeting in Leinster House nearly two years ago. There has been high demand for rented accommodation in Galway city in recent years. People have settled in towns such as Oranmore and Claregalway and now have children attending school in these places. This has created an anomaly where these people are still on the city housing list even though they have been living in towns up to 10 km from Galway for the past seven, eight or ten years. I ask the Minister to examine that issue. There are two different housing lists and it is causing a difficulty. What all Senators and public representatives require is certainty of tenancy for the future. The people to whom I refer are renting on long-term leases. I will contact the Minister after the debate as I do not want to go into specific cases.

There are great opportunities for affordable and social housing in Galway city and county. We need to deliver houses on the ground in the coming years. I have full confidence that the Minister will do that.

Senator Fiona O'Loughlin: The Minister has always been a very strong and firm advocate for housing for all. He recognises, as we all do, that everyone aspires to having a safe and secure home. Our home is our castle. It is where we can feel safe, which is extremely important. The Minister, through this Bill, will ensure that tenants have that security during this time of crisis. It is good that the legislation includes provisions to allow the measure to be used again if necessary. That means we would not have to come back to debate the matter again and the provisions could be introduced immediately. That is very important.

We all remember from school the lines in the Padraic Colum poem:

O, to have a little house!

To own the hearth and stool and all!

That is certainly something that resonates with many people. The Minister's commitment to providing affordable and social housing is commendable and an unprecedented €3.3 billion spend was announced for housing in the budget. It is just phenomenal and a 24% increase on 2020 alone. I can see the number of people in Kildare on the housing list who are absolutely relying on this Government to deliver, so that funding is very important.

I will mention a few issues in the short time I have. It is important we build communities and not just homes. We must ensure, with the almost 13,000 homes we expect to be built over the next 12 months, there is appropriate leisure, education and other amenities around these developments. The antisocial behaviour aspect has been mentioned. Over the past two to three years, this has reached a crisis level and the fact that people in their homes are subject to anti-social behaviour from neighbours is appalling. We must absolutely deal with that between the Departments with responsibility for housing and justice.

In respect of co-operative housing, there is an anomaly where tenants in social housing can buy their homes, which is really important in the context of all of us aspiring to home ownership, but those who are in co-operative housing do not have this opportunity. Legislation must be introduced to ensure this can happen. There is a problem with housing lists. I understand why local authorities need to ensure they have accurate information but this does not always happen because tenants do not get required correspondence. This is how some people realise they have been knocked from a list. Something should be done about that.

I wish the Minister well. The plans are ambitious and he deserves all our help and support in this effort.

Senator Aisling Dolan: I very much welcome the Minister with responsibility for housing to the Seanad and it is great to get to meet him. I very much welcome and support this emergency rental protection measures Bill that will ensure a rent freeze and moratorium on evictions is in place until 10 January 2021. As a renter, I have also gone through the experience of knowing what it is like to receive notice both in Dublin and Galway cities.

I ask about the relevant person element of the written declaration. In Dublin a notice came from the Residential Tenancies Board, RTB, to inform tenants of what is available and the improved rights but will the written declaration be allowed by email? If a landlord looks to increase a person's rent and the person is availing of emergency schemes, can the person in question alert the RTB? How many staff are working in the RTB on this?

I know many people have moved from rental accommodation and I very happy to see the extension of the 90-day notice of termination for failure to pay rent. Representatives have mentioned challenges and I compliment Threshold on its work, particularly in the Galway area. When people needed validation of notices for eviction prior to the Covid-19 period, it has always allowed tenants extra time. I also promote the housing assistance payment scheme as well. I thank the Minister and look forward to his response. The Money Advice & Budgeting Service is an excellent agency and it is very important the RTB takes the initiative there to connect people with that service.

Acting Chairman (Senator John McGahon): I apologise again to Senators Moynihan and Warfield for mixing up the sequence. I am sure I will not be let back into the Chair after that mistake.

Minister for Housing, Local Government and Heritage (Deputy Darragh O'Brien): How long do I have?

Acting Chairman (Senator John McGahon): You have 15 minutes. I apologise, the Minister has six minutes. I will not be picked as an Acting Chairman again. I will hand over to a more experienced Senator.

Deputy Darragh O'Brien: I hope I get back those ten seconds. As I have not had an opportunity to do so in person, I congratulate the Leas-Chathaoirleach on his elevation. I thank Senators for their support and queries and I will deal with as many of them as possible in the short space of time I have. I assure Senators that I spoke with the Leader a number of weeks ago and I intend to come here for a specific debate on housing. I have immense regard for the Upper House and have served in it. Some people may have missed my initial remarks, when I indicated that this is emergency legislation and it is not ideal. I have been in the Oireachtas since 2007 and I get that sense of frustration; no slight at all was intended, however, but because of the urgency required, we have had to deal with these measures accordingly.

I intend to have legislation on housing initiated here in the Seanad as well. I take it we will have further rent legislation early in the new year and I have already discussed this with our Chief Whip and the Leader. It will be done in agreement with the Senators, as it will be important legislation.

There were many queries that I will deal with but I will put this legislation in context first. I say respectfully that we must be responsible in our commentary, and most people have. In July, I brought legislation to the Dáil and my colleague, the Minister of State, Deputy Peter Burke, brought it here to the Seanad. It was the Residential Tenancies and Valuation Bill 2020 and it moved from what had been a blanket eviction ban, as legal advice was that such a measure was legally unsound and was not on a statutory footing with primary legislation. Some people wish to ignore that but one cannot ignore advice.

It was interesting, as last night in the Dáil, Senator Warfield's colleague stated that we do not really have to abide by the advice of the Attorney General and we could just pass the Bill, and it is fine if somebody wants to bring it to the Supreme Court. It was a really interesting insight into the way Sinn Féin might progress legislation if it was in government. It would do what it likes, having no regard for legal advice, and if somebody wished to challenge it in the Supreme Court, that is what would happen. It was a striking insight into the party's mindset.

I am talking about responsible commentary. In July, I was told that when we moved to more robust measures, we would see a tsunami of evictions and homelessness would skyrocket. A number of people on the left and hard left said that. I am thankful that did not happen. This is not to be complacent but we can see the measures are working. We have 364,000 tenancies, comprising private tenancies, approved housing bodies and student accommodation. Less than 2% of those end up in dispute, and a quarter of that portion ends in dispute because of rent arrears. We should put all this in context. Sometimes, the commentary from those who seek to stoke and feed off fear is that if measures are removed, there will be a massive push to evict people. Between 29 March and the end of July, only 42 notices of termination from

over 300,000 tenancies were issued, leaving a compliance rate of 99.98%. That is independent research from the RTB.

This does not mean we do not have to strengthen tenancy protection where we can, going right back to the 2004 Act. The July Act, effective from 1 August, brought in some permanent measures, including the rent arrears piece mentioned by Senator Dolan. From the very first notice of arrears, a copy is sent to the RTB and the Money Advice & Budgeting Service is brought in straight away. By the way, Sinn Féin and others opposed those measures, which is fine, as they are entitled to do that. We also increased the arrears notice period from 14 days to 28 days. I take the point made by Senator Higgins that this should be 60 days, which is fine. It must be recognised, however, that we have gone from 14 to 28 days, and the notice must be copied directly.

For those who did not support the legislation in July, we now know how many warning letters are being issued. These are facts from independent research and not surveys on party websites. From 2 August to 30 September, 844 warning letters, for 28 days, were issued. We know that figure now and it is good that we know it. Those letters must be copied and then direct engagement is made with tenants to ask how it would be possible to help. Any tenants experiencing difficulty paying their rent have the protection provided by the self declaration provision in place. Some people have tried to twist the small numbers involved in seeking that protection. Up to 30 September, 174 self-declarations were sought and received, and there were no refusals, out of 182 notices of termination. If there is a desire for there to be more disputes, that is fine. Then people would have to seek self declarations and protections. In an ideal world, however, we do want people to have to go to that stage.

Is there an information gap? Yes, there is and has been such a gap. That is why, from last week, 425,600 individual notifications and letters went out to tenants and landlords concerning their new rights and responsibilities. That information is in the sheet being published by the RTB, which is going out, and there is also a TV and radio campaign, as well as information in local and regional newspapers and on local radio. That is all important. We all have a role to play in disseminating that information. I say that because those are real protections and they are in place.

Many queries related to the broad context of housing. I am not ignoring them, and we will respond to them in writing. The budget we passed just over two weeks ago contained €3.3 billion for housing. That is the largest housing budget ever passed. What we all want from the house building programme are secure homes for people. Senator Higgins is right that this issue is about security of tenure. It is not just about purchase, but about rent, and concerns public and private homes and affordable homes. Next year, we will deliver 12,750 public social homes. Of those, 9,500 will be built by the State. That is the largest in any single year in the history of the State. That is what we are doing. We are bringing forward affordable rental measures, which I will be bringing to this House, for a national scheme. We will bring that in, get it in place and we will have 400 new tenancies and a new mode of housing in 2021.

We are also going to bring forward an affordable purchase scheme, which we are working on with colleagues and all stakeholders. I believe in home ownership, and every survey done has shown that the preferred mode of housing tenure is ownership. That is the most secure form of tenure. That is not to say we should not allow people to rent or that there should not be a secure rental market. There are those, however, who have come very late to the game in the context of home ownership and who have published affordable housing schemes where those involved

will not even own their own homes in the end. Under such schemes, 50% of those people caught in the affordability trap would be left out. I refer to those renting and paying 50%, 60% or 70% of their net take home pay in rent, and who cannot get mortgages. Those people will be left out because, in the proposed scheme to which I refer, arbitrary caps of €80,000 were placed on incomes of couples. That makes no sense.

There are some people who want everyone to be corralled into one type of housing. That is not our vision, and not my vision as Minister. This about providing a secure rental market and good public housing stock that will come on stream for our people, and ensuring that we drive down the homeless numbers.

I turn now to the points made by Senator Keogan. This is an important issue and there is no complacency regarding homelessness. Every week, I have a homeless delivery team meeting. People have mentioned Threshold, and I deal with that organisation every week. It is an organisation which is a superb advocate for its cause, and it was involved with the legislation we enacted in July. That was opposed by others, it was their right to do so and that is fine. I also deal with the Simon Community and all the other similar organisations, because they all do magnificent work.

We are still driving down homeless numbers. There has been a decrease since the new measures have come in. We will publish more figures next week regarding the monthly homeless figures. We hope to see that downward trend in numbers continue. Behind all those figures are people and families. They are not just numbers, and we know that. The number is below 8,700 now, but it is still too high. Any child in emergency accommodation should not be there. We have our winter plan in place and we must be cognisant that we must protect our homeless community, particularly through this pandemic. I visited many of the emergency accommodation facilities available across the country. There is capacity. I say that to people as well. Every single night in recent weeks, in all our major cities, there has been emergency bed capacity. There are beds available for people. We must look at that and see how we can improve it.

In the budget, this Government also committed to expanding the Housing First approach, particularly for our most vulnerable citizens, including those suffering from addiction and-or mental health issues. I dealt with many of them as the chair of my own regional drugs and alcohol task force. We are going to expand that approach further. We have provided funding for that approach because it is an excellent scheme, and we must protect it.

I have gone on a bit, but I will conclude. It is a pleasure to be here. Senator McDowell raised a specific point that we will look at. Many issues have been raised, and we will revert in writing to all the Senators. I am not expecting that everyone will welcome this Bill 100% and state that there are no other measures they would like to see. That is well and good, but it is important that this Bill is passed. I thank the House for its forbearance and co-operation. It is not ideal that we must truncate our debates like this, but I assure the House that, with its permission, I intend to initiate housing and rental legislation in this Chamber. We will move it on and respond to individual queries as we go.

An Leas-Chathaoirleach: I thank the Minister for his kind words and I reciprocate them. I congratulate him and wish him well in his new role. I thank him for his good work. We have known each other a long time. We wanted to hear the Minister as comprehensively as possible, so I exercised some discretion.

Question put and agreed to.

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

Senator Mary Fitzpatrick: Now.

An Leas-Chathaoirleach: Is that agreed? Agreed.

Residential Tenancies Bill 2020: Committee and Remaining Stages

SECTION 1

Senator Fintan Warfield: I move amendment No. 1:

In page 4, between lines 3 and 4, to insert the following:

“(4) Notwithstanding the interpretation contained in *section 1(2)*, *sections 2, 3 and 4* shall also apply to such persons living in dwellings with written license agreements, verbal license agreements and informal rent-a-room arrangements.”.

I will be brief because my priority, as I mentioned in my opening comments on Second Stage, is the six-month ban on evictions. We submitted this amendment to ensure that the protections in this Bill will apply to those who do not have formal contracts with landlords or are not registered with the RTB. Many people are in informal arrangements, such as renting a room from a friend who may be the main leaseholder. The Minister needs to recognise their tenancy rights when drafting legislation such as this or, more broadly, he needs to fix the private rental market. Doing nothing is not an option.

Minister for Housing, Local Government and Heritage (Deputy Darragh O’Brien): This issue arose previously, and there is one element that is relevant to the rent-a-room aspect. It was mentioned by Senator Seery Kearney as well. It is not for a landlord to decide if it is a rent-a-room situation or a real tenancy. The RTB can adjudicate on that point. Regarding this amendment, I cannot accept it. The Residential Tenancies Acts do not apply to licensing arrangements, save in the student-specific sector. I worked to have that aspect included when I was in opposition and on the housing committee with the Senator’s colleague, and others, during the lifetime of the previous Oireachtas. They are not included currently, however. Rent-a-room lodgings in a private dwelling are not covered by the Acts or this Bill, and tenancies and dwellings where the landlord lives are not covered by the Residential Tenancies Act 2004. This Bill proposes to modify temporarily the operation of certain provisions of the said Act regarding tenancy terminations in the context of a global pandemic. I do not, therefore, propose to accept this amendment.

Amendment put and declared lost.

Section 1 agreed to.

NEW SECTIONS

An Leas-Chathaoirleach: Amendment No. 2 is in the names of Senators Moynihan, Bacik,

Hoey, Sherlock and Wall. Amendments Nos. 2 to 4, inclusive, and 7 to 9, inclusive, are related and may be discussed together by agreement. Is that agreed? Agreed. Acceptance of amendment No. 2 involves the deletion of section 2 of the Bill.

Senator Rebecca Moynihan: I move amendment No. 2:

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

“Emergency period

2. (1) Subject to subsection (2), an emergency period, in relation to the tenancy of a dwelling, shall be a period in respect of which relevant regulations made by the Minister for Health restrict travel to, from or within the area or region within which the dwelling concerned is situated.

(2) Where the period referred to in subsection (1) is specified in relevant regulations as ending on a date before 31 March 2021, the emergency period shall expire on 31 March 2021.

(3) An emergency period shall include an emergency period in respect of which the Minister for Health made relevant regulations before the coming into operation of this Act and which emergency period has not expired on that coming into operation.

(4) In this section, “relevant regulations” means regulations made under section 31A of the Health Act 1947 which operate, subject to conditions contained in the regulations, to impose restrictions on travel to, from or within an area or region to which an affected areas order applies.”.

I will briefly speak to the amendment, if that is okay.

Senator Mary Fitzpatrick: Can we allow the Senator to speak to it and can she read the amendment, please? It was not circulated to the rest of us.

An Cathaoirleach: Of course she can speak to it. She has moved the amendment and she may speak to it.

Senator Rebecca Moynihan: I will speak briefly because I referred to the amendment in my speech. This amendment seeks to extend the eviction ban until, at the very least, March 2021. It also allows the Minister, where there are any restrictions on movement, to impose an eviction ban. That is a particular issue. The 5 km limit is very restrictive, particularly when one is talking about within a county. I gave the example of Fingal.

In the briefing the other day with the Department of Housing, Local Government and Heritage, there was the presumption that alternative housing would be available or made available within 5 km. However, we all know from the housing crisis that alternative accommodation is not necessarily available and, at this time, the market is probably contracting. The amendment gives the Minister the power to have an eviction ban while we are in the living with Covid phases, not just level 5 and not just limited to 5 km.

Senator Alice-Mary Higgins: A number of similar amendments are grouped together. I support Senator Moynihan’s amendment. She has offered a useful and pragmatic insight into how housing, family units and support structures work and was one of the key champions of the

bubbling mechanism which has been taken on board. She has form for offering useful proposals.

My amendments Nos. 7 and 9 are being discussed in this grouping. They are a more modest version of Senator Moynihan's proposal in that they specifically try to address the question of the 20 km restriction. There is a strong likelihood that, even if we move to level 3 after this, we will be in level 3 plus. As we have seen, we tend to have an *ad hoc* approach involving adding different measures as required. There will be concern going into Christmas when, unless cases have really substantially reduced, the Government will not want people doing large amounts of travel, yet people will still want to travel to close family.

I want to provide for the event that the Government moves to restrictions on travel outside a 20 km radius. Looking to rural Ireland, accommodation options can be limited within a 20 km limit. The other invisible supports we have had for people who are between housing in Ireland include couch-surfing, staying with a friend or crashing with a family. All such measures are restricted by the other household restrictions in place. Many informal things people have done when moving out of one housing situation and having not yet found another are not available. I urge the Minister to accept Senator Moynihan's amendment. I also support amendment No. 3, which is being discussed in this section, in relation to the extension of six months.

Senator Fintan Warfield: The six-month ban on evictions would see us through the cold winter months and, hopefully, through much of the Covid pandemic. Many countries, such as France, have had wintertime bans on evictions for years. As I said in my speech, we urgently need time and space to sort out the private rental market. The Simon Community stressed this measure will give time to get beyond flu season, increase contract tracing and for non-governmental organisations, NGOs, local authorities, the HSE and the Department of Housing, Local Government and Heritage to continue to work to reduce the number of people in emergency accommodation.

I assure Senators that Sinn Féin, if Senators agree to this measure, will work with them to provide a long-lasting solution to the rental crisis. This six-month period would allow all parties to contribute and the time-pressure of the pandemic would not hamper those efforts.

Senator Mary Fitzpatrick: I thank Senators for the amendments. I think we are in danger of trying to fix the massively dysfunctional environment of the private rented market in an emergency piece of legislation. The Minister has accepted it and I believe he is committed to trying to fix the systemic problems around supply, the provision of public and affordable housing and security of tenure, of which Senator Higgins spoke.

I welcome the Minister's commitment on the cost-rental model. That legislation is long overdue. As a city councillor, I and my colleagues have been pushing for that for a couple of years. We need to get to a point where people can have a reasonable expectation of having security of tenure and affordable homes.

We need to get this legislation through as an immediate and urgent matter but I am concerned we will create a new residential housing policy that will not meet all our needs, will be inadequate and will not address the issue of affordable rents. We absolutely need affordable rents, which need to be State-provided, secure and to provide security of tenure and affordability. We need to get this through today and not get bogged down in trying to fix all the problems, of which there are myriad. I want these issues addressed and have raised them at the Joint Com-

mittee on Housing, Local Government and Heritage. We have a large work programme at that committee and I and others have put these matters into that programme. However, if we try to fix it all here today, we will not make any progress and the clock is ticking.

Senator Alice-Mary Higgins: There are wider concerns but everybody has shown admirable restraint in that Senators have not put all our good ideas around the Residential Tenancies Bill into amendments. This grouping is specifically around creating space and time for that proper debate. The amendments do not seek to change everything about residential tenancies but to give us enough space during a time of restricted movement in terms of a six-month period to address these issues.

Primary and secondary legislation were mentioned, so I will clarify in relation to my amendments, Nos. 7 and 9, that I am presenting the Minister with two options. One is to insert the 20 km option into primary legislation, which this Bill is. Amendment No. 9 gives the Minister permission to introduce secondary legislation in the form of a statutory instrument. Both options are on the table in that regard.

Senator Paddy Burke: I congratulate the Minister and wish him well in his portfolio. I, too, believe that we cannot fix the housing crisis in this House or with this Bill.

In terms of landlords, we cannot have landlords without tenants or tenants without landlords. Landlords have played a very important role for many years and I hope that they play a role going forward. Quite a lot of landlords have left the market over the past five or six years. Why have more landlords left than entered the industry? We should debate the issue.

In terms of breaching the number of persons allowed in a household during the pandemic, whether there are more than two, four or ten people in a rented house, who is the person responsible? Fairly severe fines of up to €1,500 have been put in place for a breach but who is responsible for paying the fine? Is it the landlord or the occupier of the house? People now rent rooms in people's homes. Who pays the fine if a number of people have rooms in a house? Is it one person, three or four persons or is each individually responsible for paying if a fine is issued by the Garda Síochána?

Deputy Darragh O'Brien: To answer Senator Burke's question, later this afternoon the Seanad will debate the Health (Amendment) Bill that deals with the fines aspects.

In terms of a breach due to exceeding the number of people allowed in a home, the person legally responsible in that instance is the tenant if he or she is in charge of the house. That is something for later this afternoon when the health legislation comes here.

I understand the manner and spirit in which the amendments have been tabled. In reality, if any amendment were accepted here today then we would have to return to the Dáil and would not get this legislation enacted. I have sought an early signature motion to make sure this legislation is enacted.

Senator Fintan Warfield: That is not our problem.

Deputy Darragh O'Brien: It is the tenants' problem. I try to do things that are realistic.

Senator Fintan Warfield: Then we may as well not be here and go home.

Deputy Darragh O'Brien: I have explained, Senator. He is here on his own. I respect this

House, have come in here and asked the House for forbearance so that I can bring in this legislation that provides protections to tenants that are required in the middle of a pandemic, like I did in July. If we need additional protections into the future, as I said in July I would return to both Houses and introduce those, which is what I am doing and I am good to my word.

What I am also inclined to do, and what any Government must do, is act responsibly yet strike a balance. Going back to what Senator Burke has said, some Senators may not be aware that to have a functioning rental market we need a mix of providers. We need landlords, tenants, public housing and private housing. Without question the market is very fraught at the moment. We have lost 16,000 tenancies since 2015 for many reasons, part of which is down to tax treatment and regulation. We should examine the matter further. I want more public housing. I want affordable rentals, which I have said. The Government and I will deliver on that. It is in the programme for Government, in the Housing for All section, that was agreed by the three parties. The programme for Government is radical but realistic and deliverable. I can come in with measures and people can stoke fears, feed on it and try to gain political advantage. In some instances it is obvious that happened like in July and August when people said that there would be thousands of new homeless due to thousands of evictions but that did not happen.

I am more than confident that the measures we are bringing in here, with the support of all Members of this House, will have an effect. One of the reasons that I cannot go with six months is because I must be proportionate yet operate legally within the Constitution. Furthermore, I want to hardwire these regulations into the 1947 Act so that they are completely aligned. So at any stage whereby there is a restriction of 5 km, which is the public health restriction as mentioned earlier by Senator Cummins, this would automatically kick back in. Let us not forget that this is on top of what most of this House supported in July when we brought in the Residential Tenancies and Valuation Act 2020. People whose salary income has been affected by Covid-19 and the pandemic can avail of a self-declaration and get full protection against eviction to 11 January 2021 under legislation that has been place since 1 August 2020.

The temporary prohibition on tenancy terminations, under the Bill, operates under Section 31A of the health regulations. They are in force, as everyone knows, to restrict the movement of people outside of 5 km of their place of residence. The provision is intended to be agile, which means it activates and deactivates when tenants most need our help. In case people looking in from the outside think that all tenancies are in dispute, I wish to remind them that less than 2% of tenancies end up in dispute. We have resourced the Residential Tenancies Board, accordingly.

In response to what Senators asked me earlier, we have an additional €2 million into next year, 15 staff particularly on the investigations side, additional moneys for local authorities and €10 million extra to carry out inspections. Where we do have rogue landlords prosecutions should be brought, and I have encouraged the RTB to do this although it does not need much encouragement.

Senator Alice-Mary Higgins: With absolute respect, Minister, there is a large number of amendments.

Deputy Darragh O'Brien: I take the point made by the Senator but there are six amendments in this grouping.

Senator Alice-Mary Higgins: I wanted to check, in terms of time.

Deputy Darragh O'Brien: I do not even need to speak to the amendments; I could just say that I am not accepting them.

Senator Alice-Mary Higgins: No, commentary is useful.

Deputy Darragh O'Brien: It is important, out of respect to Senators, that I explain why that is the case. Senators, including Senator Higgins, have gone to the trouble of preparing and tabling these amendments and I will not delay much further.

An issue that has arisen a number of times is the sale of property being used as a reason to terminate a tenancy. There are about 200 ongoing investigations into that at the moment. There is a fine of up to €30,000 and prosecutions may be made.

The provisions are intended to be fair. I recognise that there is a need to complement the restriction on movement provided in health regulations but also to be fair to property owners in limiting the infringement on their property rights. We cannot just dispense with them, as some would have us believe. Individual property rights are not superior to anyone else's rights but they are rights within the Constitution. That is where it is so I cannot pick and choose. I cannot adopt an *à la carte* approach to Bunreacht na hÉireann as some would want us to do, and as arose in the Dáil last night which was striking. I cannot place a five or six-month blanket ban on tenancy terminations without proper justification. If there is a proper justification to achieve a social common good then we will not be found wanting, as we have not been found wanting in terms of bringing in protections at this stage. We need the rental sector and public housing sector to grow to meet housing demand.

Again, to those who opposed the recent budget, we have 58,500 people and tenancies supported through the housing assistance payment and made provision to provide for another 15,000. The Bill is underpinned by prevailing public health advice, and the collective will of Government, behind Section 31A of the health regulations.

I cannot pre-empt a future decision of the Government or, indeed, of the Minister for Health. I know such decisions will be based on public health advice prevailing at the time. I know the Government's decisions, because I am part of them, are taken in the best interests of us all. I will listen carefully to public health advice with regard to the safeguarding of tenants. If it were safe for tenants to move within a radius wider than 5 km, I would genuinely have difficulty in justifying a further infringement of a property right. The measure is not set in stone, however. I am indicating to the House that I can legislate only on the basis of the prevailing public health advice. At present, the temporary prohibition on tenancy termination is based on public health advice that recommends the restriction of movement outside a radius of 5 km from one's home. I informed the Dáil, and the Minister of State, Deputy Burke, informed this House, that if I needed to make further changes to tenancy law in a bid to suppress the spread of Covid-19, I would not delay in doing so. I have not delayed. I am here now, I am following up and I am acting on the prevailing public health advice. I hope this six-week restriction is the last restriction we need to face but, if not, and if this Bill is enacted, these protections will come back into play. This Bill protects tenancies now and is in line with prevailing public health advices. These advices may change in due course, and I am more than willing to come back to the Houses of the Oireachtas to make any necessary amendments.

With regard to amendment No. 9, it would not be appropriate for me to have the proposed regulatory power to change the radius of 5 km to 20 km. This is a matter for section 31A of

the Health Act, under which regulations are made on the advice of public health officials in conjunction with the Minister for Health and with the collective support of the Government.

An Leas-Chathaoirleach: We should all be conscious, as we contribute, that we should allow as many amendments and sections to be dealt with today as we can. Therefore, I will move as fast as I can. Is the Senator pressing the amendment?

Senator Rebecca Moynihan: Yes.

Amendment put:

The Committee divided: Tá, 14; Níl, 21.	
Tá	Níl
Bacik, Ivana.	Ardagh, Catherine.
Black, Frances.	Burke, Paddy.
Boyhan, Victor.	Byrne, Malcolm.
Boylan, Lynn.	Carrigy, Micheál.
Gavan, Paul.	Casey, Pat.
Higgins, Alice-Mary.	Cassells, Shane.
Hoey, Annie.	Conway, Martin.
Keogan, Sharon.	Crowe, Ollie.
McCallion, Elisha.	Cummins, John.
Moynihan, Rebecca.	Dolan, Aisling.
Ruane, Lynn.	Fitzpatrick, Mary.
Sherlock, Marie.	Gallagher, Robbie.
Wall, Mark.	Garvey, Róisín.
Warfield, Fintan.	Kyne, Seán.
	Martin, Vincent P.
	McGahon, John.
	Murphy, Eugene.
	O'Loughlin, Fiona.
	O'Reilly, Joe.
	Seery Kearney, Mary.
	Ward, Barry.

Tellers: Tá, Senators Fintan Warfield and Rebecca Moynihan; Níl, Senators Robbie Gallagher and Seán Kyne.

Amendment declared lost.

Senator Fintan Warfield: I move amendment No. 3:

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

“2. (1) An emergency period in relation to the tenancy of a dwelling shall be a period of at least six months from the enactment of this Act.”.

Amendment put:

The Committee divided: Tá, 13; Níl, 25.	
Tá	Níl
Bacik, Ivana.	Ardagh, Catherine.
Black, Frances.	Boyhan, Victor.
Boylan, Lynn.	Burke, Paddy.
Gavan, Paul.	Byrne, Malcolm.
Higgins, Alice-Mary.	Carrigy, Micheál.
Hoey, Annie.	Casey, Pat.
Keogan, Sharon.	Cassells, Shane.
McCallion, Elisha.	Conway, Martin.
Moynihan, Rebecca.	Crowe, Ollie.
Ruane, Lynn.	Cummins, John.
Sherlock, Marie.	Davitt, Aidan.
Wall, Mark.	Dolan, Aisling.
Warfield, Fintan.	Dooley, Timmy.
	Fitzpatrick, Mary.
	Gallagher, Robbie.
	Garvey, Róisín.
	Kyne, Seán.
	Martin, Vincent P.
	McDowell, Michael.
	McGahon, John.
	Murphy, Eugene.
	O'Loughlin, Fiona.
	O'Reilly, Joe.
	Seery Kearney, Mary.
	Ward, Barry.

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

Amendment declared lost.

An Cathaoirleach: The time permitted for this debate having expired, I am required to put the following question in accordance with the order of the Seanad on 22 October 2020: “That section 2 is hereby agreed to in Committee; in respect of each of the sections undisposed of, the section is hereby agreed to in Committee; the Title is hereby agreed to in Committee; the Bill is accordingly reported to the House without amendment; Fourth Stage is hereby completed; and the Bill is hereby received for final consideration and passed.”

Question put and agreed to.

Residential Tenancies Bill 2020: Motion for Earlier Signature

Senator Regina Doherty: I move:

That, pursuant to subsection 2° of section 2 of Article 25 of the Constitution, Seanad Éireann concurs with the Government in a request to the President to sign the Residential Tenancies Bill 2020 on a date which is earlier than the fifth day after the date on which the Bill shall have been presented to him.

Question put and agreed to.

Sitting suspended at 2.20 p.m. and resumed at 2.30 p.m.

Commission of Investigation (Mother and Baby Homes and certain related Matters) Records, and another Matter, Bill 2020: [Seanad Bill amended by the Dáil] Report and Final Stages

An Cathaoirleach: This is a Seanad Bill which has been amended by the Dáil. In accordance with Standing Order 148, it is deemed to have passed its First, Second and Third Stages in the Seanad and is placed on the Order Paper for Report Stage. On the question “That the Bill be received for final consideration”, the Minister may explain the purpose of the amendments made by the Dáil. This is looked upon as the report of the Dáil amendments to the Seanad. For Senators’ convenience, I have arranged for the printing and circulation of those amendments. The Minister will deal separately with the subject matter of each related group of amendments.

Senators have tabled a number of amendments which arise from the changes made to the Bill in the Dáil. In view of the number of amendments and to avoid repetition of debate, I propose that the amendments made by the Dáil and the related amendments tabled by the Senators will be debated together in related groups. Decisions on the amendments tabled by the Senators will be taken when discussion of all groups of amendments have concluded.

I have also circulated the proposed groupings in the House. A Senator may contribute once on each grouping. I remind Senators that the only matters that may be discussed are the subject matters of each of the groups of amendments made by the Dáil and the amendments tabled which arise out of the amendments by the Dáil.

Question proposed: “That the Bill be received for final consideration.”

An Cathaoirleach: I call on the Minister to speak to the subject matter of amendments in group 1, that is, amendments Nos. 1 and 7 and Seanad Report Stage amendments Nos. 2 to 4, inclusive. This is in order to avoid repetition.

Minister for Children and Youth Affairs (Deputy Roderic O’Gorman): My intention when I brought this Bill forward was that it would be a specific item of legislation to resolve the issues of the database that was created by the commission of investigation into mother and baby homes. I had hoped that this would be a discrete piece of legislation addressing a discrete and distinct legal issue. In my approach, what I lost sight of was that the issues around the mother and baby homes, and, indeed, the issues around all the major legacy issues that we have to deal

with in the State, are not cold legal problems. They are some of the most grievous types of abuse that could be perpetrated on women and children and in my haste to fix a legal problem, I lost sight of that. I realise and accept that that approach has caused anguish and frustration and this is something for which I am deeply apologetic.

I believe the Bill before us today is good law. It secures a valuable database that can help children who went through these homes establish their full identity. However, this Bill is just one piece of work we have to do. We have work to deliver new legislation around adoption information and tracing. We have work to provide the children and babies buried in Tuam a dignified burial and memorialisation. We have work to ensure that personal information about people - their full identity - is available to them. We have work to do to secure the archives of all the institutional abuse that happened in Ireland in a single location, have it appropriately managed and have it accessible in order that the terrible wrongs that were done can never be forgotten.

It is my intention to speak with the Taoiseach and my ministerial colleagues and I will seek to adopt a new approach to legacy issues in this country - one that places victims at its very centre. I make the commitment today, in my continued work as Minister with responsibility for children, to reach out to survivors and their families and those affected. I hope the relationships that have been badly fractured over the past week can be rebuilt and it is my absolute determination and my commitment to do that.

I still believe that this Bill will help many of those who passed through the mother and baby homes and will help those who continue to seek their own identity. The amendments that I speak to today are reflective of some of the issues that were raised in this House and issues that were raised in the wider dialogue on this issue.

I refer to amendments Nos. 1 and 7. Amendment No. 7 provides for a copy of the database on mothers and children and related records to transfer to the Minister. This means that both Tusla and the Minister will receive a copy of the database and related records from the commission. The amendment replaces section 4 of the Bill, which provided for a transfer of the database and related records from Tusla, if necessary, should a tribunal of inquiry be established. That section will no longer be required as the specified Minister will hold a copy of the full archive as a consequence of this amendment. As the House will be aware, the impetus for this Bill derives from the necessity to secure an urgent bespoke solution to protect the complete records of the commission, including the database, before its expected dissolution by the end of this month ensuring that the information can be immediately accessible to relevant persons in accordance with the existing statute and protecting the opportunity for enhanced access in the future. That is the rationale for the provisions of the Bill, which seeks to transfer certain records to the Child and Family Agency.

I listened carefully to the arguments put forward last week seeking to have a copy of all records transferred to my Department rather than the limited separation of records as I had initially proposed and I accept that there is additional value to this approach. The amendment seeks to ensure that a copy of the database and related records is also deposited with my Department. This will deliver a complete archive while still ensuring that the database and related records can also transfer to Tusla and remain available for use in accordance with existing and future statute. I believe that this change enhances the outcome being achieved by this legislation. Amendment No. 1 is consequential on amendment No. 7.

An Cathaoirleach: I remind Members they can only contribute once on each grouping.

Senator Ivana Bacik: I welcome the Minister to the House and thank him for those comments. However, it still begs the central question of why the legislation had to be rushed through at such speed. Reflecting on it since our last debate in the Seanad and watching the Dáil debates this week, it has increasingly come home to me that if the commission, as it indeed did, came to the Minister on the basis of its legal advice - which we obviously have not seen - saying it needed this legislation to be put in place, the Minister could have responded that he could not get this legislation passed with due parliamentary process by 30 October and that the commission would have to seek an extension. I do not see why that could not have been done. An extension of a few short weeks would have made the difference where parliamentary process is concerned and would have served to smooth the passage of what the Minister says is necessary technical legislation but which has in fact stirred up such distress and such painful memories, stories and experiences for so many people.

The Minister has been very clear and open about having underestimated the extent to which that would be the case from this Bill. I think that was a very fair comment. When we look back at the anguish which emerged in the debates in this House and in the other House on previous and related legislation, it was foreseeable that it would have this effect, particularly when this Bill will do nothing to improve access to records or information for survivors. That is the crucial point. It will simply facilitate the sealing, the 30-year rule and so on. We know all of that is in the 2004 Act, but that Act is not set in stone and could have been amended. Indeed, the Adoption (Information and Tracing) Bill 2016 could have been brought forward. I tried to ensure it would be brought forward under the Minister's predecessor, Katherine Zappone. For all of those reasons, it is unfortunate, to say the least, that the Bill has been rushed in this way and that an extension was not simply sought and granted to enable a better parliamentary process to go on.

This morning I had a long conversation about this legislation with someone the Minister knows very well - my former Labour colleague, Joan Burton, who is a former Tánaiste. As the Minister knows, Ms Burton has been hugely active on this matter and has really sought to ensure that adopted persons in particular, but also persons who were in mother and baby homes and persons whose family members were in those homes, would have access to information and that privacy rights would not be used to trump their rights to access their own personal data. Having spoken to Ms Burton and, over the years, to survivors and those who support them, including women such as the late and very great Christine Buckley and Carmel McDonnell Byrne and those who work in Barnardos tracing service and the Aislinn Centre, etc., I am aware that for everyone involved in this matter there has been a sense for many years now that the State has blocked access to information. The sense is that we have not been able to adopt suitable legislation for various reasons to do with constitutional legal arguments which should be tested more strongly. Somehow, we have not been able to bring in the sort of gold-standard legislation we have seen in other jurisdictions where adopted people have rights to access their own information and it is just a very clear right and that is unfortunate. We have got a situation where many survivors and family members have been blocked from getting information for many years. This Bill then comes into that context and is seen as simply contributing to the overall culture of secrecy and blockage of information. It is a really important point.

I must say to the Minister that we have been constructive all through this debate on this legislation. I said at the start of Second Stage that the work of the commission is hugely important. I have immense respect for the three members of the commission who are incredibly eminent.

We all eagerly await the publication of the 4,000-page report which we know will be ground-breaking. I have quoted some of the interim reports the commission has produced. They have really contributed to our store of knowledge on this issue. Given that the Minister is saying there is such a rush in getting this Bill through, I ask that he publish the report without delay, that we be able to debate it in the Houses and, crucially, that support be given to those organisations providing support to survivors and their families. That need is so clearly evident in the emails, communications, talks and conversations we have all had with so many survivors and survivors' families. I think all of us on the Opposition benches appreciate that in the Seanad - if not in the Dáil - the Minister took some amendments on board and the Bill has been improved as a result. However, we still have fundamental issues with the tenor of the Bill and with the fact that it will not provide persons with access to their own data. That is really the fundamental point which remains a point of contention and of opposition to the legislation.

Senator Alice-Mary Higgins: I thank the Minister. I am going to speak to his amendments and to my amendments to his amendments, which are grouped together. Given the time constraints, I am going to speak specifically to issues in these groupings but I reiterate that the manner, the timing and the sense of disempowerment that has accompanied this entire legislative process has been extraordinarily unfortunate and has been very traumatising for many people.

I acknowledge that when we were previously debating this Bill in the Seanad, four or five of my amendments related specifically to the point the Minister is addressing in amendments Nos. 1 and 7. I was calling on him to ensure he would have a copy of everything. The Minister may have taken on board some of the reasons it is important for him to have a copy of everything. The amendment relating to a potential future tribunal states that such a tribunal should be able to access all relevant documents in one location, as provided for under section 45, rather than having to go to two locations to seek the full suite of relevant documents. Tribunals may yet be needed in respect of the many appalling issues which have been uncovered in the process of this commission. In 30 years, when these documents may go to the archives, it will be important to point out about the related records that where records and their original copy are already into or past the 30 years, that of course should not delay them transferring to the National Archives. It is important for the Minister to emphasise that we are talking about the copies of documents that the Minister has and that there will be a full suite of documents transferring to the National Archives in 30 years.

My amendments to the Minister's amendments relate to the other key reason it is so important for him to have a full set of documents and to use them properly, which is the need to ensure that during the next few years, before the National Archives receive these documents, these documents cannot be sealed and are not sealed. A huge amount of the distress has been caused by the language of sealing. Unfortunately, it was the Government which introduced that language by saying it has taken the database out because otherwise it would have been sealed for 30 years. That language of sealing was introduced in a very unconstructive and negative way at that time. I know there have been some interpretations in the past around this being a seal and it is unviable and it is under the 2004 Act. We need to be really clear that the 2004 Act states that after 30 years these documents will go to the National Archives. There is nothing in the 2004 Act that says nothing else can happen in the interim. That is not in the 2004 Act. There is nothing in the order of 2015 that established this commission that says nothing else can happen. What we have in the order of 2015 is simply that the commission had to provide for procedures for individuals who wished to remain confidential - not general procedures, but procedures for those individuals who wish to remain confidential during proceedings and sub-

sequent reporting. That remit extends solely to the commission, its proceedings and its reporting. We have already discussed the balance the Minister has sought to strike, and I think we will get to discuss it again in the context of a later set of amendments. All of the documents the Minister receives, including these additional documents, the copies of the database, the copies of the relevant records and the other documents he had already been scheduled to receive, are subject to the general data protection regulation, GDPR. All of those documents will be subject to the GDPR not in 30 years' time but as soon as the Minister gets them. He will be the data controller and he will need to process those documents as required under the GDPR. That includes processing Article 15 data subject access requests. There will need to be processing of those and the Minister is going to have to respond to requests. The only caveat, which was not in the 2004 legislation, was brought in 2018, proving the fact that the 2004 legislation can be amended. In 2018 a new section, section 198, was inserted into the Data Protection Act, which was a new version of section 39, and suggested that Article 15 rights may be restricted to the extent necessary and proportionate to safeguard the operation of future commissions.

That is not a blanket permission to refuse requests. It needs to be addressed on a case-by-case basis. As the Minister receives requests, he must respond on a case-by-case basis to say that he is not answering a request to access personal data because if he did we would not be able to have future commissions. That is an extremely high bar. If it was not, it would be illegal. We know this from recent rulings made in respect of the Workplace Relations Commission, WRC, which stressed the point that any restrictions that might be placed on rights under the GDPR, must respect the essence of the right. Restrictions are, by their nature, restricted.

The Minister will be the data controller in respect of these documents. In anticipation of becoming the data controller, as he plans to be under the amendments he has moved, he will need to complete a data protection impact assessment, DPIA, on how he, as data controller, will deal with the database, the relevant records, and all of the other documents, how he will ensure that he will process them in a way that is compliant with the GDPR, and how he will address Article 15 issues. The interpretation of section 39 by the commission has been extraordinarily narrow. The Minister will have to make his own interpretations, which will have to be robust, and will have to do so on a case-by-base basis. In setting out the DPIA for all of the documents that the Minister is about to receive, as the data controller, he will also need to consult with stakeholders, because even storage is a form of data processing. Even if the Minister were not to process the data in other ways, although I believe he will, he would nonetheless need to complete a DPIA. I suggest that in the period between now and February 2021, the Minister really needs to address and engage with people on the issue of the DPIA, to ensure that he puts in place measures that guarantee that GDPR rights are being accessed and will be accessed.

My amendments, Nos. 2, 3 and 4, simply try to reaffirm that. The Minister has these obligations under law but I do not want to see individuals having to force him to fulfil these obligations. People have been through enough. The Minister should embrace his obligations. The amendments that have been tabled both in the Seanad and the Dáil were moved in an effort to provide the Minister with support in that, and to strengthen primary legislation to reinforce the fact of the applicability of the GDPR. This primary legislation is just as powerful as that of 2004, if not more powerful, because it reflects the full legal context including the EU context.

My amendment proposes that the Minister “shall put in place processes for the processing of the copies of relevant records and the database and records, along with such other documents as deposited with him by the Commission, under the Data Protection Regulation, including Article 15.” This amendment is helpful, and it is something that needs to be understood. As a Minister,

he is not simply appealing to officials and authority. We have heard the Attorney General being invoked, but that is advice that the Minister takes on board. The Minister operates within the constraints of the law, including the Constitution, not the advice of the Attorney General which is different from the constraints of the Constitution *per se*. The Minister also operates within the constraints of EU law etc. Within that, the Minister can make law, and it is a stronger tool for him, or it would have been. It is a missed opportunity that the Minister has not embedded procedures in this legislation, which include that not just him, but any future Minister, is paying proper attention to the GDPR.

My amendments do not seek to insert the GDPR into this legislation, rather, they try to insert action under the GDPR into it. I hope that the Minister will consider them and will do everything that he can to ensure that we do not put individuals through the appalling mill of having to individually seek to access their rights, and take their cases, which some will win, and others will die before their case is ever heard. Can the Minister clearly indicate that he understands himself to be a data controller in respect of these documents, that he will put in place proper procedures to take proper action as a data controller in respect of the full suite of documents, and indicate how he intends to move forward, including in terms of the completion of a DPIA and consultation with stakeholders around it, prior to him taking the documents in February 2021?

Senator Fintan Warfield: I welcome the Minister to the House. Many people are very angry and disappointed by the process that we have seen over the last number of weeks, and by the nature and the design of this legislation. There has been an outpouring of support that I have not seen since my first election into politics. Therefore I am making one last appeal, however likely at this stage, for us to go back to the drawing board. I have two questions for the Minister that will tee up Sinn Féin's amendments, which will be moved by Senator Boylan. My questions relate to the amendments that we are discussing, that is, around the issue of the holding of records in the Department. Will we not have a situation now where victims and survivors have to litigate against the Minister's archive in order to obtain a copy of their transcript or evidence, or indeed any other records that the Minister holds that relate to the survivors or those who have endured forced family separation? Following from previous contributors, my second question is this: should the Bill not clarify, for the avoidance of all doubt, that the GDPR applies to this archive?

Senator Victor Boyhan: I wish to thank the Minister for coming to the House; he is always welcome here. I recognise that we have a job to do and he has a job to do. I also want to acknowledge the frankness and honesty of the Minister both in his radio interview on RTÉ's "Morning Ireland" this morning, which was refreshing. It was simply honest, and it may have made the Minister appear vulnerable. I think this is the measure of a good politician - a politician who can come back and say that perhaps we underestimated this and are slightly overwhelmed, and did not anticipate the hurt involved. However the Minister has acknowledged it, and that takes courage, which I admire, and I thank him for doing so.

I also want to acknowledge what the Minister said in his opening statement. Amendment Nos. 1 and 7 are helpful, and clearly demonstrate that the Minister has been listening. However, we are where we are. A woman called me this morning to tell me that she was very disappointed, and I told her that she should not be, because it has been a long road for many people. To sum it up, it is lived experiences, a life's journey and a life's work. For some, in these last few days, they consider this to be one of the last opportunities for them to do this work. Some of them may be 70 or 80 years of age. Everyone in this House will have received emails and

telephone calls from heartbroken people.

I commend the interviewer who interviewed the Minister this morning on RTÉ's "Morning Ireland" and posed a number of questions, which I wrote down. She asked the Minister whether the State has let these people down. The State has let these people down, and the Minister did apologise for it. However, apologies are no good for these people. They have had a lifetime of betrayals, hurt and isolation, being vulnerable and being picked up, dropped and rejected so many times, through the church, education, schools, the Government, services, adoption agencies, social workers, and in the last few years, through Tusla.

3 o'clock They do not feel respected or valued. It is a sad day but I am not going to give up because it is a really important day. It is a turning point for those of us who are strong and able to carry on. We must carry on. We will have our day. The 4,000 page document will come back before us, as the Minister said, and we will call for him to come back before the House and we will discuss it. No doubt there will be many more tears by politicians and people will say they underestimated. I can tell the Minister that in four, five, or six weeks, we will be going through some of the most harrowing stories and we need to prepare for that.

We are where we are. Dáil Éireann passed the Government Bill last night by 78 votes to 67. The Government parties did not allow a free vote on the legislation. In a democracy, on an issue of such importance, the Government parties whipped their members to vote. None were able to vote against it or had the courage to stand up alone and walk away and be brave, because some of them told me that they would lose the Whip. That is a very sad state of affairs in our democracy. There were more than 60 Opposition amendments, every one rejected by the Minister. We have to deal with that. The Minister has said, in response to the amendments, that a copy will go to the Department. All the victims and survivors wanted was for it to go to the Department in the first place. They did not want it to go to Tusla. Those 60 Opposition amendments tabled last night in the Dáil were the words and aspirations of survivors and victims. The Opposition politicians did not make them up. They transcribed and interpreted the responses, engaged with their electorate and their communities, and brought that to the table. Not only were the politicians rejected, but the wishes they expressed on behalf of victims and survivors were rejected too. People feel disempowered. It is a setback. I recognise the significance of the Minister's two amendments and thank him for acknowledging, even at this late stage, that he could have done it differently.

Senator Frances Black: I speak to amendment No. 7. Our duty is to ensure that survivors of these institutions are satisfied with their treatment in this legislation. I do not want to see them retraumatised by being denied access to their statements, and I am sure neither does the Minister. He is a good man.

I will read a letter I received today from an independent councillor, Francis Timmons, who was in a mother and baby home and who wrote of his fear that this is another exercise in brushing things under the carpet. It is important that we listen to the survivors and that the truth comes out now, not in 30 years when some of the survivors may not be with us:

Dear Senator,

I write to ask you to be very vocal against the bill when it returns to the Seanad for further scrutiny the sealing of records for 30 years.

I spent the first few years of my life in Madonna House Institution I refuse to use the word home, a home is where you feel safe and have opportunities to grow. While in Madonna House I was used as part of the Vaccine Trials. I am put one of thousands of Children survivors who was mistreated in an institution.

We are told there is 57,000 survivors that are still alive, 57,000 Irish people looking for answers, Truth and Justice, both Children and their Mothers of a cruel Ireland that separated unmarried Mothers and their children. Many of us were ignored and dismissed as children when no one listened, and no one cared.

The plan by the Government to lock up files for 30 years is but another slap in the face for those who seek Truth and Justice. This legislation could see records of mother and baby institutions (homes) put beyond the reach of survivors for 30 years. This follows on from a previous plan to lock up files of survivors for 75 years. The Retention of Records Bill 2019 proposed to seal records from the Commission to Inquire into Child Abuse, commonly known as the Ryan report, and the Residential Institutions Redress Board in the National Archives for 75 years.

Both these do nothing to install faith that the culture of cover up has ended, as yet again Ireland tries to sweep the past under the carpet the truth hidden again, the voice of those who were voiceless yet again silenced. The culture of control and cover up continues as the voice of survivors is yet again under discussion in the Dail and Seanad, the real discussion should involve truth telling and a process of healing, truth and justice that would allow survivors who want to tell their story.

Many Survivors were abused sexually, physically, and mentally and this had life lasting effects on many. If we are to grow as a country and a true equal community, we need to deal with the past and all the pain and hurt that so many felt and still feel.

We were hurt as Children, please don't hurt us again, listen to those who lived through the institutions, we must never forget the Mothers who desperately wanted their Children and the Children who desperately wanted their mothers.

Amendment No. 7 provides that "the Commission shall also offer to furnish that person with a copy of their statement and/or document free from redaction". It relates directly from Councillor Timmons's request that information should not be put beyond the reach of survivors. I hope the Minister will accept the amendment.

Senator Michael McDowell: I welcome the Minister back to the House. I acknowledge his prefatory remarks on what he believes now to have been an erroneous approach of an over-legalistic kind to the legislation. It is not up to me to accept apologies but I think that the Minister is sincere in saying he underestimated the reaction this legislation appears to have had in the minds of many, portrayed as it was as an effort to conceal information which people feel should be out in the open or accessible or available to them.

In the Minister's defence, if he does not mind, I would say that when these Houses in 2015 established the particular commission, they did not request a detailed examination of what was done to every single person who wanted to come forward and give their account of what happened in these homes. They did not want to do that for the very simple reason that although the opportunity to testify as to one's personal experience is undoubtedly a very valuable thing for victims, inevitably there was going to be the problem that insofar as the allegations referred

to abuse both prior, during and after their residence in these homes, a balancing act would be required and a testing of accounts would have to take place.

Therefore, these Houses, in utmost good faith, established the twin-track approach that the commission could summon people who it felt were necessary to achieve its purpose, which was to give to the Irish people a general account of what had happened in those homes and not a particular line-by-line analysis of whether one particular person was abused, as undoubtedly did take place, and as to their rights this way or that. These Houses attempted to strike a balance between the absolutely natural and totally justified desire of victims to be heard in some sense and the problem that it would be a selective commission, dealing with only a narrow range of the homes. It may have been a representative sample, but it was not a comprehensive examination.

Second, there was undoubtedly a need at the time to circumscribe the activities of the commission so it could report within a reasonably short period of time. The commission was established in 2015 and it is now 2020. This has taken us five years. We are going to get its report at the end of this month, which is a good thing. As the author of the Commissions of Investigation Act 2004, I believe in retrospect that it should never have been used as the vehicle for this commission. Tailor-made legislation would have been far more appropriate than the 2004 Act. It was designed to allow speedy and private investigations in which witnesses and their testimony would never be exposed to the public gaze unless absolutely necessary. Publicity was not the purpose of the exercise, but rather trying to find out what happened with regard to specific issues. The difficulty the Minister now faces is that five years ago a decision was taken to use a fairly blunt instrument which was not well adapted to the feelings of victims or their wish for personal vindication. A legislative mechanism was chosen which would almost inevitably produce the problems we have today, unless the law was amended at some point.

In this sense, I have a good deal of sympathy for the Minister. At the 59th minute of the eleventh hour he has inherited a legislative and emotional time bomb which was ticking away. It was going to have a certain result, namely, that all of this material would be archived with no satisfactory outcome for many people who want maximum vindication and closure. Having one's account heard by someone does bring some degree of closure, though obviously not complete closure. I agree with what Senator Bacik has said. The advice received by the Minister was that the appropriate thing to do was to wrap everything up by 30 October, the presumed end date of this commission. However, this could not be done in a satisfactory way for various reasons which we have debated in these Houses. While I admire the Minister's humility in saying that the legislation took a legalistic approach, we have to be fair and acknowledge that he was faced with an almost impossible position. He had to deal with a highly inappropriate legislative time bomb which was going to explode and leave victims extremely unhappy. This required some intervention. The only error, for which he cannot be personally criticised, was imagining that extending the life of the commission was unthinkable until he considered the implications of not doing so.

I fully agree with Senator Higgins. This material will be subject to the general data protection regulation, GDPR. It must vindicate the rights of data subjects in relation to material that relates to them. I notice that Senator Higgins's amendments require the Minister to put in place various provisions, mechanisms and procedures to give full recognition to the status of personal information relating to data subjects and accord them their rights under European law. That is very desirable. Whether it actually needs to be stated is another question, as it is the law. European law trumps Irish law, so those rights have to be vindicated. Obviously certain concerns must be balanced in that context. Those things have not been said. It is a pity that

we have found ourselves with a gun to our head, having to deal with this without adequate time for consideration. It is a pity that the option of extending the life of the commission but still delivering the final report at the end of the month was not considered adequately. This option would allow the opportunity for pre-legislative scrutiny and consideration of the very serious issues that have arisen in the minds of the public. It is a pity that the Minister and his Department found themselves in this position. It is like a television movie where a bomb is ticking and a clock is going down, and the protagonist has to snip the relevant wire to prevent a catastrophe.

The amendments I put down were listened to by the Minister and were addressed in amendments made in Dáil Éireann. I was very pleasantly surprised. Personal views may differ on whether an opt-in or an opt-out basis is more appropriate. Where a Minister attempts to deal with us decently, this House has a tradition of being non-adversarial and recognising what has happened. I hope that those who feel that the exercise was fated to be one of institutionalised cover-up at least understand that the 2004 Act was not the vehicle to give victims the public vindication that might be allowed by some kind of public testimony. It was never going to be that. The Minister has now confessed to fault and that is refreshing to hear, but in the circumstances we should understand that he found himself in a very difficult situation not of his making.

Senator Regina Doherty: I thank the Minister for his opening remarks and for the humility of his approach, especially in the past week. In Irish society there have been few occasions where we have felt the gut-wrenching anger of our citizens with regard to the treatment of previous generations of Irish women and men. We have definitely felt the anger, the hurt and the sense of revisiting the humiliation inflicted on these women and men over many years.

I wish to speak to amendment No. 1. I welcome the Minister's decision to keep a copy of the entire archive for himself. Given the previously stated policy of his officials was not to open any of the boxes and, therefore, they would not have access to the information in the archives, I am curious to know whether he intends to respond to data requests from data subjects. Those requests will come. Regardless of whether one agrees with Article 15 - I do not - regarding the commission's use of the data, the responses it has given to data subject requests in recent years have not been worth the paper they were written on due to the redactions. The commission used the provision whereby it could determine it necessary and proportionate to refuse the information on the basis that it would hinder its ongoing work. We are all waiting in anticipation for the 4,000-page report. It will be very telling about how the State has dealt with another chapter in Irish history.

I will not table an amendment, but this is a vital point. For the avoidance of doubt, does the Minister intend the GDPR legislation and the get-out clause used by the commission to apply to the archive that will be deposited with him? Will he maintain the blanket seal on the archive and refuse to reply to data subject requests? If so, how will he reply when people come looking for that information, which they will?

Senator Mary Seery Kearney: Senator McDowell has stolen all my lines. There are bona fides in the presenting of this Bill, but we can never say anything on it without prefacing our remarks by acknowledging the context, namely, the appalling wounds and trauma and the retraumatising that is happening in the course of this discussion. I believe there was an original intent to see a legal problem, see a deadline and deal with the legal problem in the hope that doing so would release information as opposed to withhold it. In the public narrative around that, however, the intent has been changed and, at times wantonly, misrepresented. We need to get back to the basics, in that this Bill is about assisting people in accessing information.

In that regard, I welcome the Minister's amendments and that he has listened to what was without question a worthy debate in this House. I agree with Senator Higgins's view, in that the Minister will now receive these data as a consequence of his amendments. That is welcome. However, it puts him in control. Currently, there is legislation to tell him what he has to do. Regardless of whether we liked it or whether it was intentional, that Act was amended by the GDPR. In transposing the GDPR into Irish law, we made an amendment to the 2004 Act to allow for the competing balancing act between Articles 23 and 15. However, there have been subsequent EU rulings on the entitlement to information. There is a fundamental human right in this regard.

While I agree with the spirit of Senator Higgins's amendments, the Minister needs to undertake a data protection impact assessment, DPIA, quickly. Ideally, it should be done at the Joint Oireachtas Committee on Children, Disability, Equality and Integration, but it must be done with a view to determining how to set in place a mechanism that takes into account all of the matters we want to address, including the pressing need of people to have their own information and their lawful right to access same, without creating unintended consequences for other commissions, witnesses and situations. We must consider that wider context. Unfortunately, the Government does not have the luxury of addressing one situation and it must consider the ramifications. That process must take place, ideally in the Oireachtas committee or some other specially created forum. We could invite experts and stakeholders and people from all sides of the Oireachtas to ensure that we reach a solution to the issues being presented by people who want contact with their relatives and to know who they are, where they came from and why their lives transpired as they did. They are entitled to that information, and the GDPR provides for that, but we have a balancing to do under Article 23. There are competing rights, but the rights of individuals should trump everything else. Politics is supposed to be the art of the possible. Without politicising it, we can move together and do that in acknowledgement of people's hurt. It is important that we do so quickly.

I echo the Leader's question. Now that the Minister will have the archive, what does he plan to do with it?

An Cathaoirleach: I call Senator Mullen.

Senator Rónán Mullen: I had not indicated at this point.

An Cathaoirleach: If the Senator wishes to contribute later-----

Senator Rónán Mullen: I will move an amendment later.

An Cathaoirleach: That is okay, but we might not reach some amendments because of the constraints. To remind Members, under the order of the House, we are finishing at 4.45 p.m. As such, we might not reach every amendment.

Senator Rónán Mullen: In that case, I would like to contribute now.

An Cathaoirleach: The Senator should stick to the amendments under discussion.

Senator Rónán Mullen: Yes.

An Cathaoirleach: He should keep it brief. We are on Dáil amendments Nos. 1 and 7 and Seanad amendments Nos. 2 to 4, inclusive.

Senator Rónán Mullen: I need the Cathaoirleach's assistance on this matter. My amendment is No. 9. I do not have much to say on it but I do not want to-----

An Cathaoirleach: That is towards the tail end. We will try to get to it, but I want to stick to the amendments under discussion. The Minister will then respond. The next speaker on this group of amendments is Senator Ward.

Senator Barry Ward: I welcome the Minister. I acknowledge and welcome what he stated at the outset. One of the issues with Irish politics is that, when we make mistakes, we do not admit them often enough. As the Leader stated, the Minister's comments demonstrated a humility that is often absent in politics. I welcome the compassion of his comments and I acknowledge Senators' remarks about the level of pain and anxiety this legislation has caused in the public discourse in recent times.

An Cathaoirleach: I apologise, but will the Senator please move to the seat next to him? It has a microphone.

Senator Barry Ward: I am sorry. I do not know whether I need to repeat it, but I acknowledge what the Minister stated at the outset of this debate. The humility of his comments and his acknowledgement of mistakes in the context of this legislation were important.

Senators have mentioned the effect of those mistakes on the survivors and victims of the horrible deeds about which we know. The anxiety, hurt and upset they have been caused are undeniable. In all of the discussions in the Houses, what has been absent is a recognition of what has truly caused that hurt, that is, a sustained and dishonest campaign of misinformation about what the Bill does. Every Oireachtas Member has received thousands of emails on this subject, including ones that were grossly misinformed because of discussions online and elsewhere, including the mainstream media, about issues that were not covered by the Bill. I do not know how many emails I have received from people criticising me for sealing the records of the mother and baby homes, a matter that is not addressed in the Bill. I have challenged other Members to point out where the Bill states we will seal those records. They have not been able to tell me because it does not. This is a short Bill that deals with the specific issue the Minister identified, that is, safeguarding the database created by the commission.

I welcome the Minister's comments on revising the time limits to be applied to information from the commission and revising what we will do to make that information available to people. Everybody, in both Houses, recognises the importance of his doing so. However, if we are to be honest on this subject, we must recognise that there are parties out there, and in here, who have been involved in wilfully misleading the victims of these homes.

Senator Pauline O'Reilly: Hear, hear.

Senator Barry Ward: They have wilfully put out information that has deliberately caused upset, anxiety and hurt to the very people whom they purport, in this House, to represent. In fairness, some of those same people have acknowledged the Minister's good intentions in this. He has an honest and forthright approach and he has sought to do what is right. However, others have twisted that and taken what is in the Bill, misrepresented it and led the people they claim to represent up the garden path.

Senator Ivana Bacik: On a point of order, the Senator is making some very serious allegations about the conduct of certain people. He is not naming anyone or saying whether they are

in this House or outside it but he needs to be careful where he is going in making allegations about people “wilfully misleading” or “deliberately” seeking to mislead. That is a very dangerous sort of allegation to make, especially in such a sensitive area. Many people feel very passionately about this issue and there are many people who have been wronged in it. It involves a history of wronging and shameful treatment of women and children. I know the Senator appreciates that we must be mindful of the context in which this debate is taking place. I advise him to be careful about his language.

Senator Alice-Mary Higgins: I would like to add-----

An Cathaoirleach: Unless they are raising a point of order, Senators who want to intervene must ask the Senator who is in possession if they may do so.

Senator Alice-Mary Higgins: I am raising a point of order.

Senator Barry Ward: I recognise the point Senator Bacik is making.

An Cathaoirleach: I want to point out that Senator Ward is talking about what is and is not in the Bill regarding the sealing of the records. We are dealing with proposals concerning the deposit of the records with the Minister. These provisions relate to where the records are going to go, which is what the Senator is talking about. I ask Members to be mindful of their use of language and of making accusations in the House, in this discussion or at any time.

Senator Barry Ward: I acknowledge what Senator Bacik said but it is really important to call out what has happened. She is correct that there are people who have been wronged. To be absolutely clear, I am not blaming any of them. There is a cohort of people, including those who have been through the homes, those who were born in the homes and the families and friends of those people, who have endured unimaginable suffering as a result of what happened in this State. None of that is denied and I do not blame any of those people. I blame other parties who have intervened. I can stand over what I am saying because of the more than 5,000 emails on the computer in my office. The vast majority of those emails - some 4,000, I would say - contain exactly the same thing because they came from a website that was generated to allow people to plug into it for that purpose.

Senator Ivana Bacik: On a point of order-----

Senator Barry Ward: Will Senator Bacik allow me to address what she said?

Senator Ivana Bacik: On a point of order, people are entitled to campaign-----

An Cathaoirleach: I have allowed Members latitude because we are under a time constraint and some of them may not get to speak. However, we are drifting into a Second Stage debate and people are making speeches that do not relate to the matter under discussion, that is, the deposit of the records with the Minister. What transpired in terms of emails to Members and all of that is not relevant to the group of amendments we are discussing. Any Member is allowed to intervene and I understand the points being made-----

Senator Barry Ward: I have already yielded once, a Chathaoirligh. I am not saying that there is anything wrong with sending emails. God knows we welcome emails. If Senator Bacik will allow me to finish the point I was making, it is that much of the information contained in those emails is deliberately misleading and inaccurate in terms of-----

An Cathaoirleach: I am going back to-----

Senator Barry Ward: A Chathaoirligh, I must be allowed to address the point that was raised.

An Cathaoirleach: The Senator is most welcome to address the House. He is in possession and other Members are raising points of information. However, my point is that we are discussing the first group of amendments, concerning the deposit of records with the Minister, comprising amendments Nos. 1 and 7 and Seanad Report Stage amendments Nos. 2 to 4, inclusive. I ask Members to confine themselves to discussing those amendments. I understand the points being raised. If Senator Bacik has a point of information, I ask that she make it now.

Senator Ivana Bacik: I will do so very briefly. This House is a democratically elected institution and we are public representatives. People are perfectly entitled to organise emailing campaigns. This is not the first such campaign and I am sure it will not be the last. People are perfectly entitled and, indeed, justified in so doing if they feel strongly about an issue. It is up to us as public representatives to respond to and call out the individuals who email us if we believe that what they are saying is wrong or we disagree with them. We certainly can do that but we should not be critical of them in this House.

Senator Alice-Mary Higgins: On a point of order, there is a practice in this House whereby Members do not refer to persons or organisations outside the House in a way that makes them identifiable. In terms of specific campaigns run by specific organisations, I feel we have strayed into that type of thing. Several Members have expressed concern about whether the amendments they have put forward will be reached in the time available. We need to have a really clear focus on the amendments at hand.

An Cathaoirleach: That is the point I am making. I am asking Senators to stick to the subject matter of amendments Nos. 1 and 7 and Seanad Report Stage amendments Nos. 2 to 4, inclusive. Does Senator Boylan wish to raise a point of information?

Senator Lynn Boylan: I wish to raise the same point as Senator Mullen did. I am seeking assurance that we will get to the amendment I have tabled that is in the second group of amendments. If not, then I will speak to it now, seeing as Senator Ward was allowed to veer off into making accusations about people.

An Cathaoirleach: Senator Boylan is next to speak on the current group of amendments but Senator Ward remains in possession.

Senator Barry Ward: The point I am making is not to criticise people for emailing Senators or to discourage them-----

An Cathaoirleach: Sorry, Senator Ward-----

Senator Barry Ward: I must be allowed-----

An Cathaoirleach: I make the point, again, that we are dealing with the deposit of the records with the Minister. That is the provision in the Bill to which the amendments in this group relate. We are not speaking about emails being sent to Senators.

Senator Barry Ward: If a point of information or order is made against me, I must be allowed to respond to it.

An Cathaoirleach: Senators are making the point, validly, that the discussion must be confined to the amendments under discussion. They have made their point and-----

Senator Barry Ward: I am sorry, a Chathaoirligh, but they have also suggested that I am criticising people who send emails to Members of the Oireachtas. I must be allowed to address that point because it is not what I said.

An Cathaoirleach: The Senator has spoken on it-----

Senator Barry Ward: I am not criticising people for doing that.

An Cathaoirleach: -----but it is not relevant to the amendments we are discussing.

Senator Barry Ward: I will finish on this point. I am saying that there has been a visible campaign of misinformation in respect of what is in the Bill.

An Cathaoirleach: I will make the point one last time that Senators are to speak only on the amendments that are under discussion. The issue of emails being sent, if it was in relation to-----

Senator Barry Ward: I am going to finish the point I am making, which the Cathaoirleach has deemed to be relevant.

An Cathaoirleach: Only if it relates to the deposit of records with the Minister.

Senator Barry Ward: The point I was making is that there are issues in this regard precisely because there is a significant misunderstanding abroad, among people in our society, that this Bill does something that it does not do. I am saying that this misunderstanding is a result of information that has been put out by people which is incorrect.

Senator Lynn Boylan: The information comes from human rights lawyers.

Senator Barry Ward: That misinformation is a significant factor and a major part of the hurt and anxiety that has been caused in the first instance. I am calling it out because I think it is wrong, just as other Senators have criticised other aspects of the issue we are discussing, as they are entitled to do. There is a major problem of misinformation and we need to identify it. If we say nothing about it, it will happen again and we will allow-----

Senator Rónán Mullen: Senator Ward should issue a press release about it and allow us to get on with dealing with the amendments.

Senator Barry Ward: I will finish if people stop interrupting me. The point I am making is that if we do not call it out, it will happen again and again. It is important to stand up when one recognises that something is happening that is wrong. The point I raised is relevant to the amendments we are discussing. I welcome what the Minister said in terms of acknowledging that things can and should be done better. I welcome what he said about re-examining the availability of the records as they will be under the remit of his Department.

Senator Lynn Boylan: I will speak to the amendments but I will also defend the Clann Project, which is an admirable initiative, and the human rights lawyers who have been putting out the information about the provisions in this Bill. As a person from a legal background, Senator Ward, you should know that legal opinions differ. How dare you call into dispute other legal opinions and claim that the people voicing them are trying to misrepresent what is being

sought to be done in this Bill?

An Cathaoirleach: Sorry, Senator Boylan-----

Senator Lynn Boylan: It is important to call the Senator out and to defend the rights of people to email us.

An Cathaoirleach: The Senator must address her points through the Chair. If she has an issue with what a Member has said, there is no problem in raising it but it must be done through the Chair.

Senator Lynn Boylan: I will make my point through the Chair. Senator Ward said that bodies such as the Clann Project orchestrated a campaign.

Senator Barry Ward: I did not.

Senator Lynn Boylan: He was not brave enough to name the organisation but that is who he is talking about.

The Sinn Féin amendments are a final attempt to facilitate the Minister to do the right thing by providing survivors and other individuals affected by this investigation the right to access all the information that pertains to them in the archive. Under the Minister's amendments, the records will remain sealed. The issue is not about sealing them. The issue is that this legislation does nothing to unseal them. The only information that will be accessible to those affected is the limited database that is going to Tusla. Survivors are fundamentally opposed to that body holding their information. I listened intently to the Minister in both Houses and heard him refer to the Attorney General's advice to which he is bound. According to the legal expert with whom I have spoken, he is not bound by the advice of the Attorney General. It is advice. Putting that aside, let us consider the advice allegedly given by the Attorney General, namely, that the right of access to personal data set out in Article 15 of the GDPR is expressly prohibited by section 39 of the Commissions of Investigation Act and that Article 23 of the GDPR provides for exceptions in a range of circumstances, including those relating to the administration of justice. Other Members said that national law cannot override EU law, particularly that which is derived from the EU charter. The Minister stated that section 39 exempts the records from Article 15 requests; it does not. In fact, it does not even mention Article 15 because it could not unless it had a time machine and could see into the future. The Commissions of Investigation Act was passed in 2004 while the GDPR was passed in 2016. Instead of section 39, to which the Minister is clutching tighter than a string of pearls, it refers to the Data Protection Act 1988, which was almost completely repealed with the exception of two Acts that can still rely on it. The Commissions of Investigation Act is not one of those. If the advice to which the Minister refers is the advice of the Attorney General, he is doing some serious mental gymnastics to make his case. I will quote Simon McGarr, who is probably one of the people Senator Ward is calling into question. He is the director of Data Compliance Europe. He stated: "This is deep into what might be termed 'novelty'."

The Sinn Féin amendments facilitate the Minister to do what he would ordinarily do in response to requests for personal data in the commission archive once it is sealed. It give him the "out" from the legal cul-de-sac into which he appears to have led the Government but, more fundamentally, the amendment is a final attempt to respond to the heartfelt appeals from the survivors, their families and human rights lawyers to ensure they have access to all of the documents that pertain to them. I cannot fathom what it must be like for people to know that

there are documents about them, their brutal experience at the hands of these institutions and their families and lived experience, and that after everything the State has put them through, it will now put those most critical documents into a box and put them away from them. I cannot get my head around the fact that the Government would even contemplate this after everything this State has done to those women. What we are doing with this Bill is creating a situation whereby victims and survivors of forced family separation must take the State to court to access the documents about them that it is holding. That is some legacy for this Government - dragging older women through the courts.

That is not even touching on the broader issue relating to the archive, the index and the concerns of archivists regarding discrepancies in how the commission references its sources, including giving only one-line references for multi-decade tranches of files. The manner in which this Bill has been brought through the Houses has retraumatised the survivors. This is not being done by those calling on them to appeal to the legislators to listen to their voices. It has been brought about by the manner in which the Bill is being fast-tracked and in the way it is being handled in these Houses. There is no excuse for that.

An Leas-Chathaoirleach: Can the Senator keep within the amendment?

Senator Lynn Boylan: I am keeping within the amendment.

An Leas-Chathaoirleach: Yes, but fast-tracking is not the amendment.

Senator Lynn Boylan: The survivors of mother and baby homes have been repeatedly treated with contempt by this State and the Minister is asking us to trust that he will fix this at some future date so that there will be access to the documents. Why would survivors trust the State? They have been let down at every single point. In December 2018, the Collaborative Forum on Mother and Baby Homes requested that health and well-being resources be put in place. In April 2019, the former Minister, Katherine Zappone, committed to giving them. In December 2019, the former Minister for Health, Deputy Harris, said that they would be rolled out in January 2020. It is October 2020-----

An Leas-Chathaoirleach: With respect, that is a Second Stage speech.

Senator Lynn Boylan: I will finish on this point. In October 2020, it was confirmed by the Minister for Health that none of those resources have been rolled out. The State said that survivors must join the back of the queue after Covid so why would survivors trust the Minister for Children, Equality, Disability, Integration and Youth when they have not even been afforded counselling for which they asked back in December 2018?

An Leas-Chathaoirleach: We must stick to the amendments to give everyone a fair opportunity to speak on them.

Senator Mary Fitzpatrick: The Sinn Féin speaker clearly has a well-rehearsed script. I will stick to the amendments.

An Leas-Chathaoirleach: I am not impugning Senator Fitzpatrick.

Senator Mary Fitzpatrick: I was not taking the Chair's comment that way.

I welcome amendments Nos. 1 and 7 from the Minister. When this Bill was introduced to the Seanad, I was critical of the Government's approach in fast-tracking the legislation. It is not

how we should do our business. I accept the urgency. Survivors have been waiting five years for the commission of investigation to complete its work. It has indicated it is ready to complete its work and provide the Minister with a report next week. Every single one of the survivors deserves to have that report furnished to him or her and made public as soon as possible. I support the Minister and accept his apology, which is heartfelt and sincere. We are all learning on the job. It was unfortunate for the Minister and the Government but, most importantly, for the survivors, their friends, families and supporters and everybody who has campaigned for them and, therefore, the apology was appropriate and welcome.

When the Minister brought the Bill to us, I said that we live in a era of data. I do not want to in any way reduce the enormity of this history to a discussion of data but that is what the Bill is about. I specifically asked the Minister to ensure that one entire unredacted record of this archive would be kept in one place because the original proposition was that the archive would be sealed and the database transferred to Tusla. Critically, the Minister's amendment seeks to ensure that one entire unredacted, unedited and untouched record is retained in the Department. I do not think it is a small database. I have not seen it. I do not know. I have heard others say that it is a small database. I do not think it will be an Excel spreadsheet with a number of lines. My expectation is that it will be a database that will document records of more than 60,000 individuals over 75 years of records and data. That is not a small data file. That is not something insignificant. That is very significant and precious, which is why I would like the Minister to tell me the format in which it will be secured and how it will be secured because data are fragile. That is important. It does not necessarily have to be captured in the legislation but I want to understand the format in which the records, documents and database will be deposited in the Department and how they will be secured. I also want to know what the process will be in the interim because we do not have the information and tracing legislation required. What will be the process be until such information is in place for individuals to be able to make requests for their personal data?

I also support the Minister's amendment that will allow those who contributed and gave evidence to have that evidence released. That is very welcome and something else we had sought. He has said that if we pass this legislation, the commission can report. There is talk of the report being in excess of 4,000 pages with an anonymised index of 80 pages. This is incredibly valuable but once that report is available, it must be made public because, more than anything, there are many sides to this and many lived experiences. In Dublin Central there were a number of these institutions. I know many of these survivors and I know that people have different ways of dealing with history and their past and of wanting to reclaim it and reclaim their identity. More than anything, however, I think that, collectively and individually, they want to be heard. They want their voices to be heard and their story to be told. Therefore, when the report of the commission of investigation is completed, I want the Minister's Department to make it public. I want it to be made public online and deposited in every library in the country. It will be part of our history. It should be made available to all our citizens. I have asked the Minister this before but I will not end my contribution without mentioning again the need for an archive. I heard him talk earlier about the State moving to having a victim-centred approach.

An Leas-Chathaoirleach: We are beginning to stray from the amendments.

Senator Mary Fitzpatrick: I will finish then.

An Leas-Chathaoirleach: For all our sakes I am trying to keep to them.

Senator Mary Fitzpatrick: As for the establishment of an archive, Sean MacDermott Street is an ideal site. The site was given to the State, intended as a repayment. I would like the Minister to speak on that before we finish the debate today.

An Leas-Chathaoirleach: Again, I exhort Members, in fairness to their colleagues and in order that every colleague will get in, to keep their contributions tied to the amendments.

Senator Pauline O'Reilly: I welcome the Minister. I have been asked that the Government take a survivor-led approach to this. The Minister's comments today show that that is what he will do from now on. Generation after generation has been let down by the State imposing its will on people. I thank the Minister for his comments on that.

To speak directly to the amendments, the Minister has shown he has taken on board what the Senators raised with him last week and also what has been raised with me by phone, email, text and letter. I have not been able to respond to all the correspondence I have received but I have done my best to listen to it.

GDPR is raised in some of the amendments. Senator McDowell put it best: GDPR applies whether or not it is referred to in the Bill. We must not forget that. Therefore, for the moment, it is not necessary to refer to it in the Bill on the basis that the Minister has asked the Oireachtas Joint Committee on Children, Disability, Equality and Integration to examine the issue. That is the point about GDPR. Others have made it better than I have made it with their legal background, particularly in the context of the legislation from 2004 and 2015, and I thank them for that.

From the Green Party's point of view, we are newly in government, faced with a difficult situation that was urgent. It is really important to say, however, that there is no mention of sealing of data in the Bill. I think people have been re-traumatised in the past week by misinformation. Whoever's fault that is, it is a fact that has to be acknowledged. Now we all need to be on the same side and the same team, not against one another, and we need to take the word of victims and survivors and use that as our basis for moving forward.

Senator Aisling Dolan: I welcome the Minister. I take on board the amendments tabled by our Seanad colleagues. The database is what it is all about. It is being protected. The fact is that it can be used by Tusla and that the social workers will be able to access information in the database to provide it to families looking for that information. As for the question of GDPR that my colleagues have raised, the database that resides with Tusla, from what I understand, comes under GDPR. In other words, GDPR applies to the database that is with Tusla. Will the Minister confirm this?

We are about justice. I really hope the report will be published as soon as possible. Justice for the survivors is what we all want. We want that report as quickly as possible. Are there any timelines in that regard?

Deputy Roderic O'Gorman: There were a very significant number of contributions, so I will try to address the key points made by the various Senators. If I slip into repetition at all, I apologise.

Senator Black read a very powerful letter from Councillor Timmons about his fear that what happened is being swept under the carpet. I absolutely acknowledge that, but that is the absolute last thing I want to see happen as Minister. It was stated that the Bill will seal records. It is

really important to state that the Bill will not seal any records. The consequences for the records arise from the original Acts of the 2000s, not from this Bill. I would not bring before this House a Bill to seal such records. There are great questions over the 30-year rule. I would like to put that on the record, with all due respect to Senator Black and her correspondent.

Senator Bacik in her comments raised the issue of publication without delay, which was raised by many other Senators. Once the report is issued to my Department, it has to be reviewed by my Department and by the Attorney General and then, subject to a Government decision, it will be published. I think I said this the last time I was here but I will say it again. I have said it in the Dáil. It is my intention to publish this as quickly as possible. I cannot give a timeline but I am conscious that survivors have waited a long time. My haste in trying to get this Bill through was on the basis of not delaying this further but ensuring we make this report available to people. That is my commitment: as soon as possible we will get it published. I think that what will be valuable will be not just the content, not just the 4,000 pages, but also the recommendations that the three commissioners will include in the report. I am conscious, however, and never more so than after the past week, that its publication will be another incredibly traumatic event. We have spoken this week about re-traumatising, which I have acknowledged. This will be a re-traumatising event. I therefore absolutely take on board Senator Bacik's and Senator Boylan's points about the need to support organisations that will be the front line for the people most affected by the issues that will come up in the report. I do not have detail on that right now but I will make a note to address it and between my Department and other Departments we will be ready for that when it comes.

In response to Senator Higgins, in particular to her amendments, yes, GDPR applies to my Department and, yes, I am the data controller for the archive. We have had substantial engagement with the Attorney General on this point. That engagement has focused on section 39 of the 2004 Act. It is worth remembering - Senator Higgins read out to us most of the text of section 39 - that it is a strong exception. I know the extent to which the balancing is-----

Senator Alice-Mary Higgins: It is not an exception but a restriction. That is a very important clarification given that the word "prohibition" was misused earlier.

Deputy Roderic O'Gorman: I take that on board, but it is worth stating that the amendment came in following the introduction of GDPR. That is important. Section 39 was amended in 2018 to deal specifically with the introduction of GDPR.

In light of that, the Attorney General has stated that I am bound by that as data controller and by the revised section 39 on responding to data access requests. I do not see that it is morally feasible that my Department can continue to refuse data access requests, specifically for personal information, as we go forward when this archive comes over. I have to deal with the legal interpretation that is given by the Government's legal adviser. We need to fix this problem. I repeat what I said in the Dáil yesterday, namely that I am committed to fixing that problem. I have agreed with the Attorney General that we will sit down and tease through the various issues but I suggested in the Dáil that we use the Committee on Children, Disability, Equality and Integration to bring in the experts, many of whom the Senator cited, to explore the alternative interpretations. I envisage that we would not just bring in the experts but representatives of survivors as well so the need to provide for access to this data is expressed within the House and then I can move. I was asked by a number of Senators what I will do. I do not know today what I will do. We have this legal advice and I have what I and most Senators believe is the right thing to do so I have set out a course of action and that

4 o'clock

is how I propose to act on this particular issue. We can pass this legislation and then move on to this one process of moving on and dealing with some of the consequences that have been raised. Senators Boylan and Warfield raised the issue and I accept that there will be litigation stemming from a complete refusal to give access to the data. We will have the consequence, as was pointed out, that people will be dragged through the courts in appeals at various stages and I do not want to see that happen. We can find a resolution to this particular issue. I do not profess that it will be easy but we can find a resolution to the issue that faces us.

I thank Senator McDowell for his comments. As I look at the situation, I agree with the Senator's comments about the inappropriateness of a commission of investigation for investigating what happened in the mother and baby homes. As I say, however, we have to deal with the situation as it stands. I have responded to the points made by Senator Doherty about the application of GDPR, particularly section 39. On Senator Seery Kearney's question on what can be done, I have outlined what I have proposed to do, specifically on the issue of GDPR. I have addressed Senator Boylan's comments.

Senator Fitzpatrick asked some specific questions about what format the material will come to Tusla and to my Department. As we know now, my Department will be getting the entire archive and Tusla will be getting the database and copies of the relevant records. My understanding is that there will be both electronic and paper copies within what is being transferred, particularly within the archive. There will be significant paper copies within that as well. My Department has already done an initial DPIA and I know Tusla is undertaking one. We are also in continued engagement with the Data Protection Commissioner because we know this is a significant consignment of material in different formats. Therefore, we will continue to engage and to seek advice about the management of that where we feel need to do so. We are conscious of the importance of this material.

That leads me on to the issue of archiving, which Senator Fitzpatrick and other Senators raised. Again, the debate over the last two weeks has highlighted the need for a sensitive way in which material can be stored appropriately as well as be curated to an extent. A number of Senators have referenced the approach taken in Germany with the Stasi Museum as a potential model whereby there was a divisive period in a nation's history with confidential and personal information contained in files. The German State made a decision as to how to approach that. I do not know a huge amount about it yet but it is something I need to look into in more detail. The idea of a permanent location has been mentioned, and the CoLab project on Sean McDermott Street has been cited in that regard. I had a presentation about three weeks ago with Dr. Maeve O'Rourke and Deputy Gannon in which the ideas for that were outlined. Those ideas are definitely interesting. I cannot make an absolute commitment on it today.

Our focus has been on the mother and baby homes archive. There are other archives. There is the archive of the Ryan commission, which was a source of considerable debate in the previous Oireachtas and which was not resolved. There is the McAleese commission as well, which is another detailed archive. These archives are in a legal limbo to a certain extent and that is not appropriate either. I know the term "all-of-government approach" is overused but these issues are not just for the Department of Children and Youth Affairs. They are issues that stem from other Departments as well. Whereas the legal basis for the investigations differ, some of the broad principles about the sensitivity of the material that these investigations addressed and the desire among those who were victims to access that information, are common across them all. As I said at the start, I have committed to that and I will be engaging with the Taoiseach and my ministerial colleagues. I had a quick conversation with the Minister for Education and

Skills yesterday to get a sense of her situation with the Ryan report. That is ongoing work but I am convinced of the need for an archive. If we can do that and combine it with some sense of memorialisation, that may be where the Sean McDermott Street site would be appropriate. We could have something like an archive commemoration but perhaps there could be some societal and community gain in the area as well. That is an attractive package and it would be one element of an appropriate memorialisation of everything that has happened.

An Leas-Chathaoirleach: I call on the Minister to speak to the subject matter of amendments in group 2, that is, amendments Nos. 2 and 10 and Seanad Report Stage amendments Nos. 1, 11 and 12. I invite contributions.

Senator Rónán Mullen: On a point of order-----

An Leas-Chathaoirleach: I apologise to Senator Mullen. The Minister is to come in on this initially.

Deputy Roderic O’Gorman: Dáil amendments Nos. 2 and 10 enable the commission to remain in existence beyond the submission of its final report. This is for the purpose of engaging with people who attended before the confidential committee in order to allow them to state their preference for anonymity where that is their wish. As such, the amendments are effectively consequential on amendment No. 9, which provides for this process of engagement. The amendments have the practical effect of separating the submission of the final report from the commission’s dissolution in law. Crucially, this will allow the commission to remain in being until 28 February 2021. This will enable the commission to engage with those people who courageously contributed to the confidential committee process. I will empower those people to decide on whether their stories, as captured in the archive, are anonymous. The approach proposed will ensure this can be done without delaying the submission of the commission’s final report. As Senators will be aware, that is due on 30 October and the commission has indicated it will be ready on that date. Accordingly, as I have stated previously, this is why the urgent passing of the legislation is needed. It is my sense that we need to ensure that the commission can conclude and submit its final report at that stage to begin the process whereby it can be fully published.

The amendments have been brought forward following the debate in this Chamber and I hope they are seen as an acknowledgment by me of having listened to the issues flagged here. I accept there has been a heated debate on the issue in regard to the very strong desire of some people to have their names clearly associated with what they said, versus the desire of others for whom it had taken a great deal to go before the confidential committee and who never wanted any permanent record of their names with their contributions. I believe we have struck a fair balance in what is being proposed and by giving the commission additional time, following the submission of its report, to contact people who appeared before the confidential committee.

Senator Rónán Mullen: I welcome the amendment because the extension of time to delay the dissolution of the commission, if not the report, flows directly from the Minister’s effective acceptance of the amendment proposed by Senators McDowell and Boyhan in respect of the issue of redaction. Having listened to the Minister, I know he has a very challenging task in his Department. These are very challenging issues and I wish him well in addressing them. When he was describing his Ministry, it occurred to me, in light of some of the challenges he may face, that it might be better order if the Department were named the Department of disability, integration, children, equality and youth, which would make it dicey.

What also strikes me as dicey, however, is that we will, according to the Cathaoirleach, quite likely get to the end of the debate without some or all of the amendments having been capable of being moved. If the Minister and the House were amenable, it would be good to get his response to those various amendments. My amendment, as he will know, also concerns redaction and has to do with an issue that I drew to his attention on Friday last. By nodding his head, he indicated he would consider it. I was disappointed that an amendment was not brought forward in the Dáil to address what I regard as a significant justice issue. The Minister rightly considers it appropriate to provide that those who went before the confidential committee in the expectation that what they were saying and presenting would be treated in confidentiality, and that the commission notify them and give them the opportunity to have their personal data redacted, hence the delay in the dissolution of the commission, which is the subject of these amendments.

By the same logic, it is appropriate that the same right be afforded to third parties that might be the subject of allegations that would be damaging to their reputations and that were made in that confidential forum, not least because given the nature of the work of the commission and its confidential committee, certain claims could not be tested. That is nobody's fault and the nature of the work would require that, but it seems as a matter of justice that in identifying personal data relating to third parties named, where their reputations could be damaged or where families could be hurt or aggrieved down the line, a similar redaction should take place. Speaking to my amendment, I would be grateful if the Minister addressed that point before we get to the end of today's business.

Senator Ivana Bacik: I thank the Minister for his very considered response to comments made by many of us in respect of the first group of amendments. In particular, I thank him for his response to my comment about the need for supports for those who will be affected by the publication of the report and the organisations supporting them, and for his commitment to ensuring that enhanced supports will be made available, which is important and good to hear. I also thank him for his positive comments on the archive and the securing of access.

It has been a constructive debate, as the second group of amendments reflect. As the Minister stated, the Government amendments are consequential to the debate in the House last week, which is very positive. It is unfortunate that one Government Senator chose to adopt a confrontational tone in impugning the motives of people who had expressed opposition to the Bill because, generally, it has been a very good debate in the House.

Having said that, we remain critical of aspects of the legislation. Through Dáil amendments Nos. 2 and 10, the Government seeks to provide that the commission shall not be dissolved until 28 February 2021. That raises the question I asked earlier as to why there was such urgency with the Bill and the need for it to pass all Stages, to be guillotined through the House and to be enacted by 30 October. Although the report will be published on 30 October, we are now providing that the commission itself will not be dissolved until 28 February 2021. Would that not always have been a better approach to take, to give us more time to debate the issues and to enable a clearer explanation of the context for the Bill being put forward? It is unfortunate, although we will not object to the extension of time for the commission to carry out the work that will be provided for now in establishing the agency of those who gave evidence to the confidential committee. I will not oppose that extension of time but the amendment highlights that the time could have been extended before now, which would have meant we would have had appropriate time for proper parliamentary scrutiny of the Bill, rather than having it rushed through the Dáil and the Seanad in the way it has been. That is an obvious point to make when considering amendments Nos. 2 and 10.

On behalf of the Labour Party Senators, I support Senator Higgins's amendment No. 1, which seeks to do what I have just described, namely, to provide for a longer date, specifically to the end of January. I will also support amendments Nos. 11 and 12, put forward by the Sinn Féin Senators, which were also signed up to by the Labour Party Senators on Committee and Report Stages last week. I acknowledge the amendments have been addressed by others and we have spoken to them in respect of the data protection law aspects and of the application of the Data Protection Act.

It is unfortunate that we are rushing the debate and that we may not get to other amendments. Nevertheless, I wanted to put on record my views on the amendments in the second group.

An Leas-Chathaoirleach: I thank the Senator. Given that it is such a respectful, controlled debate, Senators might exercise their own judgment on being brief in order that everyone will get involved and every amendment might be reached. That is purely up to Senators and there is no way for me to stop them, but they might show deference to colleagues in that regard.

Senator Regina Doherty: I have a query for the Clerk. I have been trying to find out the information from my office but have not yet heard the answer. The Chair is due to pose the question to pass the Bill at 4.45 p.m. but we are not due to start the debate of the Health (Amendment) Bill 2020 until 5.30 p.m., which gives us 45 minutes. Can we extend this debate until 5 p.m. or 5.15 p.m. to give colleagues an opportunity to get to amendments that we are not likely to reach if I keep rabbiting on?

An Leas-Chathaoirleach: It is at the Senator's discretion, as Leader of the House, to make such a proposal, which will then be put to the House for agreement. Does she wish to propose that?

Senator Regina Doherty: Yes, I would like to. I propose we continue with the debate and not put the vote until 5.15 p.m., if that is acceptable to colleagues.

An Leas-Chathaoirleach: Is that agreed? Agreed.

Senator Regina Doherty: We are on the Minister's second amendment, which compels the investigation to give us a report by 30 October, and give an extension before it winds up, until 28 February 2021. The Minister's response to me on the amendment in the previous section was that he is going to rely on amendment No. 15 to not give information to data subjects on the basis of an amendment. That amendment applied to the workings of the commission whereby they were refusing information to data subjects on the basis of the necessity and proportionality to safeguard the effective functioning of the commission. The commission is to be stood down on 28 February 2021. What basis is the Minister going to use in the Department to refuse data requests from people after 28 February 2021? If the Minister is going to continue to refuse the data set, as he said he would, even though he knows it is morally wrong, what will the Minister give as a reply to people when they make those requests? If it is anything like what is being given by the commission, it makes a real insincerity of what we are doing here today.

Senator Alice-Mary Higgins: I have an amendment within this grouping. I completely agree with the points made by Senator Doherty. It is, and remains, the nub. The Minister has described a process that he will put in place but there is also a process of the data protection impact assessment, DPIA, where the Minister needs to look to how he as data controller, not the commission, will deal with the documents. The Minister is the data controller of these documents, not the commission, the information within which belongs to the persons. The impact

assessment would also need to look at the rationale of the impact on the process, or even the reporting, of the commission, which will have passed and not be relevant after that point on 28 February. The Minister mentioned a process but I believe that we need to clarify that this will involve a DPIA and that the consultation would feed into a data protection impact assessment.

I am trying not to be adversarial, and I do not seek to embarrass the Minister or anybody else, but the really crucial thing is the idea of fear being created and so on. It was created by the use of the language of “sealing”, which was used by the Government. I have multiple instances of that. Yes, the language said that it was not sealing under this Act, the caveat being that it is to seal under the 2004 Act and that we are trying to get around that. The language of “sealing” was used. I agree that the information is not being sealed under this Act. It is not sealed under the 2004 Act, even as amended. These files will become an archive. Right now they are just a set of documents, a set of relevant records and a database. All of those documents are not under seal. As Senator Doherty has said, it is not an exemption. It is telling that the language was used again in terms of the strong exemption. It is not, as was quoted, a prohibition. It is a restriction, subject to very tight caveats. The tightness is on it. If it was a blanket provision or a blanket measure, then section 39 would be illegal and would be struck down as being incompatible with our laws. The case law referred to by Senator Seery Kearney has shown increasingly that one cannot have a blanket provision or measure. That is not allowable or acceptable. If section 39 was to operate in any sense as a seal, a prohibition or an exemption, it would not be eligible law. If it is to serve as a balancing act, as described, then it needs to be subject to appropriate balances and checks. I put it to the Minister that the circumstances will have changed significantly because, as Senator Doherty pointed out, there will no longer be a commission in play on this issue. That commission will be concluded. I acknowledge the Minister has engaged positively with that debate in the last session between Senators McDowell and me and others on how we might appropriately reflect the diverse wishes of those who engage with the confidential committee. Given the amendments in this section the Minister has put in place in respect of redaction, there will have been an action that asserts those rights of persons. They will have been able to redact themselves from those documents. Again, the balance will certainly shift, in that context, when the commission has finished its work and when persons who have a particular wish to be confidential will have had themselves redacted from the documents. I put it to the Minister that it will be extraordinarily difficult to say that by giving people pieces of personal information about themselves, their family, their early life, their health or their name when they were born, it would somehow damage the operation of a future commission. That would be an extremely difficult thing to prove. Nobody wants us proving this in court. That is the key.

The Minister has said that he recognises the Minister as the data controller and is wrestling with this Attorney General aspect. It is the Minister who is the data controller, not the Attorney General. The Attorney General can give advice. That advice can be on the constitutionality or the advice may state that this may be challenged. Constitutionality is one issue that does not arise here. If the advice is that the legislation may be challenged, that is a different piece. The Minister needs to look into this robustly. I believe that the Minister will end up in a different situation in terms of that original advice but I wish the Minister had taken the step now. Senator Boylan’s amendment No. 11 is better than my amendments, in that it is really clear. It was a chance for the Minister to make a decision on what he wanted to apply, much as in 2018 when the then Government chose to amend the 2004 Act. The Minister was completely free to do so. If section 39 deals with the administration of requests and Article 15 rights, there is nothing to stop the Minister from choosing to not apply section 39 for this specific commission. That could have been done legislatively and it could still be done if the Minister accepts amendment

No. 11. Instead, the Minister will end up doing it with a slightly more difficult process. I would like the Minister to be a little bit stronger and clearer around the fact that he will not be giving blanket provision and blanket replies to people who make data subject access requests. That is a real concern.

My amendment is about changing the date and delaying the date of the report, which I do not want to do and I will not press the amendment. I proposed the amendment because I am concerned that the sixth interim report has still not been published. We are going towards a date for the publication of the final report, and we have seen the seventh interim report, but the sixth interim report has not been published. I am concerned about what is in that report and why it has not been published. I do not want to see that kind of delay. I believe it was concluded nearly one year ago in January and has not yet been published. We do not want to see that delay in the commission's report. I proposed my amendment to give space for the interim report to be published and then the final report. I will not press the amendment but that is the concern.

Senator Pauline O'Reilly: The conversation we had last week in the Seanad was specifically around this issue relating to the Government amendments Nos. 2 and 10. Their specific purpose is to address the concerns Senators have raised. Senator Ruane spoke to this issue incredibly well and powerfully last week. In the terms of reference and in the leaflet that was given to those who came before the confidential committee to tell their stories, people were not asked if they wanted their names to be kept and for the public to be able to see and identify what had happened to them. The Minister felt that this lack of agency was an injustice. These two amendments would provide that those people who do not want their names attached to their stories will be able to ensure that this does not happen. Those who do also will be able to ensure that this happens. It gives people a sense of agency that they did not have. An awful lot of other things in respect of agency are not being addressed here. That is very clear and is why this is the start of what will be a long and difficult process for many people in this country. That is why that date of February is there. The commission will publish its report at the end of October. That is what it said it is going to do and it has not looked for an extension. That period of time is there in order that everybody can be contacted and be allowed that sense of agency. These two amendments are welcome and they achieve what the Seanad was asking the Minister to do.

Senator Michael McDowell: The aim of invoking the workings of either the present commission or future commissions is immaterial as grounds for withholding information or not applying GDPR. In my view, GDPR qualifies and makes conditional both the National Archives Act, to some extent, and the 2004 Act because the provisions of those Acts have to be interpreted in a GDPR-compliant way, even though the GDPR makes provision for archives and the like. I am not absolutely clear how GDPR would interact with other statutory provisions, except that it is the law in Ireland now and a statute law has to be interpreted as conformable with GDPR.

I refer to the Minister's amendment, which would wind up the commission at the end of February. I always accept the rulings of the Chair. However, I submitted an amendment on Committee Stage to extend the commission by a few weeks and the Standing Orders of this House meant that the Chair felt obliged to say that it could have the effect of increasing the charge on the Exchequer. Therefore, it was ruled out of order. I just want to draw to the attention of the House to the fact that that provision in the Standing Orders is badly in need of reform.

Senator Paul Gavan: Hear, hear.

Senator Michael McDowell: It is very unsatisfactory in such a situation, where one wants

to extend the life of a commission with a view to creating more time, to be told that because it might cost the Exchequer some money we cannot even discuss the idea or raise the issue on the floor of the House. Senator Norris has been very strong on modifying that rule and it would require an interaction between the Dáil and the Seanad because it has implications for money messages and things like that. In this House, it seems a ridiculous constraint on our debate, especially since my amendment was only ruled out of order because it was an amendment to a Government Bill. If I had introduced a Bill to achieve the same thing, that is, to extend the life of the commission, it would have been perfectly permissible for us to debate it in Private Members' time. It is a strange aspect of our procedure here, to which the Committee on Procedure and Privileges will have to return. We need a more balanced approach to these kinds of matters.

Senator Mary Seery Kearney: These amendments are welcome. They are a response to the amendments that were fought over and the debates that occurred in this House. I accept that there is a need to extend the commission's life to 28 February. I am curious as to how the groupings worked on this because I would think this should have been discussed with amendment No. 9. As I understand it, the purpose of the extension is for the commission to write to the contributors to the confidential committee, in order that they may exercise their agency and decide whether they wish to be redacted or named. I will come back to that as I have a difficulty with whether one opts in or out. As the Minister previously mentioned, I had the same curiosity about that. Maybe I am missing something here but if the report is issued on 30 October and the intervening period until the end of February is given to allow people to have their names included or not, are we going to end up with two reports? How is that issue being overcome? Will we then lose the intervening period due to the report going to the Attorney General and its publication and all of that? As a consequence of this amendment, will we lose the period from October through to February? I would appreciate clarification on that question.

Eoin Wilson in the Minister's office has been fantastic in chatting through some of the issues with me. I am anxious about what happens with the report. First and foremost, it should be an exposure of our society and the people who were victims of our society and State throughout a particular period. Its purpose should truth-telling in the first place. We must acknowledge the journey and hardship that has been imposed on people, as well as our society's attitude and what we tolerated, thought was okay or did not even think to question. That would be significant in and of itself. I also want the report to lead to justice being served and for it to be forwarded on. In that context, and this may go to Senator Mullen's question, it is my understanding that anyone who went before the confidential committee was given the same warning given at the beginning of any counselling session, that if what the person said engaged trial protection, the commission will be obliged to take action on it. That is my understanding but perhaps the Minister could confirm that for the benefit of the House. It is also my understanding that some matters have been referred to the Garda Síochána and that names have been attached to them. It would be beneficial to hear about that in the context of Senator Mullen's comments.

Senator Lynn Ruane: I have a quick question about these amendments. When survivors who have given testimony to the commission are contacted about whether they want their records redacted, will they also be provided with a copy of their testimony at that time?

Senator Lynn Boylan: Will the Minister comment on the announcement and findings by the Data Protection Commission regarding the application of GDPR to the archive? The commission observed that, apart from a database which is being sent to the Child and Family Agency, Tusla, the records will be sealed for the next three decades. The Data Protection Commission provided a number of observations on this. According to an article in *The Irish Examiner*,

Deputy Commissioner Graham Doyle stated that “the 2018 Data Protection Act, itself drafted in order to enact the EU’s powerful General Data Protection Regulation (GDPR) within Irish law, ‘explicitly amended’ the 2004 Commissions of Investigation Act so that ‘any restriction on the right to access personal data processed by the Commission can only be implemented ‘to the extent necessary and proportionate to safeguard the effective operation of commissions and the future cooperation of witnesses’.” Mr. Doyle said “It would appear to the [Data Protection Commission] to be the case that the separate provisions of the 2004 Act in relation to the sealing of documents were not intended in the context of the amendment to the 2018 Act to provide an effective ‘blanket’ barrier to the exercise of rights”. Does the Minister want to respond to this information, which is just breaking in a report in the *Irish Examiner* today? The Data Protection Commission is saying that the Government is breaking the law by sealing the mother and baby homes records.

Senator Sharon Keogan: I welcome the redaction part of the legislation that the Minister has taken up from Senators Boyhan and McDowell. What happens to the data of an individual who gave a testimony to the confidential committee and is now deceased? Does any individual named in that testimony have access to that data? Are such individuals contacted? How will the victims be contacted for opting in and opting out, and the sensitivity around that?

Deputy Roderic O’Gorman: In response to Senator Boylan, I have not seen that report or what it has commented on, so I am not in a position to comment on it. I have been here with the Senators for the past period of time.

Senator Bacik made the point that we are putting a delay in this Bill and the consequence and asked why not delay originally. Since coming to the Department my sense was that, for legitimate reasons outlined by the commission of investigation in its interim reports, this report had been delayed for too long and my goal was to ensure that the final report could be published. It was suggested in the Lower House that perhaps I had asked the commission. It is a statutorily independent commission and I do not know if it would be appropriate for me to ask it to take longer, particularly when it indicated it was ready to report on 30 October. The delay we provided for can only take place if this legislation is passed. The sole purpose of that delay is to allow engagement between the commission and those who attended before the confidential committee on the basis of the personal stories they told.

That ties into the question asked by Senator Seery Kearney as to whether this impacts on the final report. It does not. First, there are no names of the people who gave personal stories to the confidential committee in the final report. Second, the redaction, where that is chosen, only takes place in the context of what goes into the archive. The final report can be given and the relevant redactions can take place, where necessary.

Senator Keogan asked about when a person has been deceased. We engaged with the Attorney General on this point. The decision was made that the approach taken would be to opt into redaction, rather than opt out of it. That was taken on the basis of the understood *status quo* of the 2004 Act and the terms of reference of the commission of inquiry. Where somebody is deceased, it will not be possible to redact the person’s name from the person’s testimony. Again, that was a decision based on the best approach. We have discussed whether opt in or opt out was better, but that was the determination in light of advice from the Attorney General.

As regards the potential reference to third parties in somebody’s personal story to the confidential committee, and this is a response to what both Senators Mullen and Seery Kearney

said, it is worth remembering that personal stories were not sworn testimony, whereas when the person appeared before the commission it was sworn testimony. The Department engaged with the commission on that and it said, in accordance with its rules and obligations, the personal stories do not contain the names of third parties where criminal allegations were made. If in the course of an engagement between an individual and the members of the confidential committee any allegations came up, at that point they were notified immediately to the Garda. It is a little like what the Senator said in the context of counselling. The engagement with authorities took place at that point. I understand the commission has fulfilled its terms of reference and rules of action as regards where an issue of criminality came up in the context of a discussion in front of the confidential committee, and it was referred on. Obviously, if something happened before the commission that was sworn testimony, the commission was in a position to summon the other person. That will be referenced within the report.

Regarding GDPR and the contributions of Senators Doherty and Higgins, my Department will hold the entire archive from 28 February. I have been working on the basis of advice from the Attorney General regarding the restriction that was placed on us by section 39. I have undertaken enhanced engagement with the Attorney General on that, because I do not wish to be in a position where we are offering blanket refusals. I do not want to do that. We have engaged with the Data Protection Commissioner in the context of the impact assessment. We circulated that to Senators earlier in this process. I do not have the full answer to how we will address it today, but I have set out the process and I am determined because I believe many of the issues relating to access to personal data, in particular, could be resolvable in the context of GDPR.

Senator Ruane asked me a question which I noted but I cannot find it.

Senator Lynn Ruane: It was about when survivors are contacted and whether they will also be provided with their testimony at that time.

Deputy Roderic O’Gorman: Not under the amendment I have tabled. I hope that is something we can address in the wider scope of things, but I am not able to provide for that today. However, I recognise that it is an issue.

An Leas-Chathaoirleach: The next group is definitions, subject matter of amendments Nos. 3 to 6, inclusive. Two Members were indicating their wish to speak in the following order, Senators Gavan and Mullen.

Senator Paul Gavan: I will try to be brief. I have to follow up with the Minister on this section. As this debate takes place, we are learning that the Data Protection Commission was asked for and gave information to the Department regarding the legality of the Bill. I have a simple question. Can the Minister tell us what the commission’s observations were? If not, he must explain to us why he does not know them.

Senator Rónán Mullen: This arises out of what the Minister just said. He helpfully addressed one aspect of the amendment I tabled. It related to information that might serve to identify any third party, living or deceased, who was the subject of any untested or unproven claims and allegations contained therein, where such claims or allegations concerned an illegal act or would otherwise in the view of the commission be injurious to the reputation of any third party. I proposed that redaction would be required in respect of such claims or allegations. The Minister clarified that, where the commission in its confidential committee phase received any allegation concerning an illegal act, there would be a redaction without prejudice to what else

it might have had to do in respect of notifying authorities.

What is to happen where there is other information not relating to an illegal act? When drafting the amendment, I was thinking of a very unjust possible situation. To put it in a real-world scenario, let us say that a person was named as being the parent of a particular baby. That might be disputed and it could cause hurt to future family members and so on. It does not necessarily involve claims about illegal acts. I would be grateful to know the Minister's view - and what the commission would do - regarding circumstances where somebody was named but where this was injurious to his or her reputation but did not necessarily relate to something illegal.

Senator Ivana Bacik: This group of amendments relates to the application of data protection regulations but, as others have said, it is of genuine concern that there are reports that the Data Protection Commissioner has expressed serious reservations about the effect of the 2004 Act and stated that, as a result of its application, we will see effective sealing for 30 years. I am conscious that the word "sealing" is loaded but the reality is that this is the effect for survivors, who will not have access to their personal information. Reports just emerging indicate the Data Protection Commissioner has said it is difficult to see how the 2004 Act's provisions on the sealing of documents could supersede the Data Protection Act 2018 given that the latter Act states any restriction of the right to access personal data can be implemented only to the extent necessary and proportionate to safeguard the effective operation of commissions and the future co-operation of witnesses. On the basis of the view of the Data Protection Commissioner, it is difficult to see how rights of citizens to access their own records can be prohibited or prevented through an Act that was passed prior to the passage of the data protection law. That is a crucial issue. The recent reports really illustrate the fact. It is a point we have been making throughout the debate on the Bill.

I have one other point. The Minister, in his response to the debate on the earlier group of amendments, stated the commission is independent and he could not make a request of it to extend its time, but clearly there was correspondence from the commission to the Minister in the first place, based on legal advice we have not seen, seeking that this legislation be passed. From the helpful briefings we had with the Department, I believe that was the case. In the context of that correspondence, it might have been possible to request that the commission extend the time.

I previously welcomed commitments the Minister made on supports for survivors. I welcome the commitment he made in the Seanad, and again in the Dáil, that there would be an index to the database published. That is all very welcome but the central point arising from these amendments and the application of data protection law - the central point about how the 2004 Act can act as a blanket barrier to the accessing of personal data - remains the key point. It has been very much raised by the Data Protection Commissioner.

Senator Alice-Mary Higgins: The Minister stated that information relating to criminal acts was brought to the attention of the relevant authorities at the time. In that case, I am surprised that we have not seen a raft of prosecutions. It seems clear from what we have heard that large numbers of illegal acts have taken place. I acknowledge that the Minister will be engaging with the Garda when the final report comes through but it would be useful to know when illegal acts have been identified. Might we anticipate prosecutions and legal proceedings?

The message coming out regarding the Data Protection Commissioner is exactly what we

have said repeatedly, namely, that it is not legal to have a blanket provision. I acknowledge that the Minister was indicating his wish but we need to be stronger than that. Even if we want to ensure this legislation does as desired, the Minister needs to be clear that his understanding is that he will be making different and diverse decisions in regard to each subject access request he gets, that he will be balancing those out on each occasion, that there will be no blanket provisions and that there will be due consideration. He is now at a point where he is in jeopardy. If we suggest that we are accepting a seal or an implied seal for now and that we will re-examine the matter later, it needs to be clear that this is the Minister's understanding because otherwise this Bill will have the potential to be illegal. That is an important point to be addressed.

The Minister indicated that he is not now dealing with the question of people's statements. If people are being asked whether they want their information redacted, surely they need to be either given copies of their statements or afforded the opportunity to obtain copies. It is surely detrimental to the operation of future commissions and the co-operation of future witnesses not to give a witness a copy of her own testimony. I tabled an amendment previously based on this interpretation. I realise that the Minister does not like to direct the commission but I would like him to clarify whether he will be engaging with it. In the process of seeking preferences in regard to redaction, will he be asking it to furnish witnesses with copies of their own statements?

Senator Erin McGreehan: There is an incredible body of legal experts taking one side or the other side. The Data Protection Commissioner is now saying that this Bill could potentially break the law. We have the Attorney General with one-----

Senator Mary Seery Kearney: I have a point of order. That is not what the article states.

Senator Erin McGreehan: My apologies. I retract that.

An Cathaoirleach: May I clarify the position on a point of order? If the Senator wants to give way, Senator Seery Kearney has 30 seconds.

Senator Erin McGreehan: Yes, of course.

An Cathaoirleach: Thirty seconds.

Senator Mary Seery Kearney: It is not what the article states. It refers to the 2018 amendment of the 2004 Act; it is not referring to the Bill currently before the House.

Senator Erin McGreehan: Perfect. I thank the Senator.

Senator Mary Fitzpatrick: The headline-----

An Cathaoirleach: If the Senator wants to make a point of order, she must ask the Senator in possession. We cannot have a discussion in the Chamber. Comments must be made through the Chair. If a Senator wants to intervene, she or he must, under Standing Order 39, ask the Senator in possession to allow the intervention, and 30 seconds are allowed for the intervention.

Senator Erin McGreehan: My point is that there is an incredible body of legal experts with a diversity of opinions. A question arises over people having to take the Government to court. Why can the Government not pursue a test case? We all agree across this House that the women in question own their histories. We have all heard the testimonies. I do not know how many buckets of tears I have shed this week over the women, and I am about to shed tears now. We need to test this law. We are passing this Bill today. I absolutely agree that the

narrow scope of the Bill is to protect the data but the next step is critical. It is a matter of the Government questioning its own law. The Minister has said the women own their testimonies and that we need to find a way. I am no legal expert so we need to get the legal experts to rule on this. We need the women to have their justice. I echo what Senator Higgins said, namely, that if there have been allegations of crimes - my sense is that there has been criminality - the people concerned need to be questioned in a criminal setting. I do not know the legalities of that either. The crux of the matter, however, is that we have to test all these GDPR arrangements and the legacy of setting up this commission under the wrong Act. It was wrong to set it up under the 2004 Act. As a layperson, I was glad to hear Senator McDowell state that.

I had believed that my feelings on the matter were right. We have to test the consequences of our actions.

Senator Regina Doherty: It is important that the Minister respond. He told us previously that he would rely on the amendment to support his and his Department's stance to apply blanket refusals on information requests. I find myself in the unusual position of being on the same page as the Data Protection Commissioner, DPC, given that I have had a number of years of differences with her, but her salient statement is that it is necessary for the Department to demonstrate "why in all the circumstances of this Commission it would be necessary to restrict rights of access" and how, in sealing the records, it is safeguarding the rights of citizens to access their own information, particularly in terms of that action's necessity and proportionality, which are key measurements under GDPR legislation and the amendment.

The Minister stated at the outset that he was not comfortable with the current position and that he would put measures in place to make changes. Why are we not making them now? The Department and his officials have already received advice from the DPC, but information has not been supplied to her or us-----

Senator Paul Gavan: How can we----

Senator Regina Doherty: -----explaining why the Minister is still comfortable relying on the amendment under the 2018 Act.

Senator Mary Seery Kearney: Regarding contributors to the confidential committee, how can they make a decision on whether they should have their names attached to their contributions if they do not have a copy of what they said? I agree with Senator Higgins in this regard. The advice is that people would be able to identify themselves within the report, such is the transparent manner of the representation of what they said. If so, why not just send them a copy anyway? That would be beneficial.

I believe the Minister stated that Tusla was undertaking a DPIA and that his Department had done one. We must clarify the context of those DPIAs. What processing were they attached to that resulted in this advice from the DPC on the blanket ban? A blanket ban is not permissible. There must be a proportionality and balancing of rights - the rights of the State, the greater good, or the commission versus the rights of the individual. Will the Minister elaborate on the context of the DPIAs and how they came into being? From the article, it appears that the commentary relates to the 2004 Act and the 2018 amendment of same, and is confined to saying that a blanket ban is unlawful and goes beyond what is necessary and proportionate. Will the Minister give us the context of the DPIAs? It may illuminate the article.

Senator Lisa Chambers: Other Senators have outlined the key issues. The information that has come to light is important to the debate. It is regrettable that so many victims and their next of kin and other family members have taken from this that there is some attempt to try to restrict their rights to the benefit of institutions or those who have done wrong, including abusers. That is due to a breakdown in communication from all sides. However, this advice from the DPC is significant. It changes things. I have spoken to the Minister numerous times. I do not doubt his intention in this legislation and he is doing his best, but it does not strike me as reasonable that an individual would not have a copy of her or his own testimony. It does not make sense and is not logical. No law could have been drafted with that intent in mind.

Deputy Roderic O’Gorman: I have not seen the article in detail, but my understanding, including from what has been stated in the Chamber, is that it refers to the 2018 Act and its amendment of section 39 of the Commissions of Investigation Act 2004. That is not what my Bill addresses. Rather, my Bill addresses the transfer of the database from the archive to Tusla. That is an important point. We have all highlighted our concerns about the interpretation that I am relying on of the breadth of the amended section 39. I indicated my intention to address that through engagement with the Attorney General. My Department has been engaging with the DPC for the past week. We conducted the initial DPIA. Where the DPC has raised any issue about areas where the interpretation of the Attorney General has conflicted with the DPC’s interpretation of EU law, we have referred those issues to the Attorney General’s office.

It is important to state that the interaction between section 39 and GDPR is not contained within this Bill. It is a-----

Senator Paul Gavan: On a point of order,-----

Deputy Roderic O’Gorman: I will finish.

An Cathaoirleach: Does the point of order relate to the Standing Orders of the House?

Senator Paul Gavan: Yes. Our amendment No. 11 would fix this issue. The House needs to vote for it.

An Cathaoirleach: I am sorry, but that does not relate to Standing Orders.

Senator Paul Gavan: This is the only opportunity to raise it.

An Cathaoirleach: Please, Senator.

(Interruptions).

An Cathaoirleach: The Minister without interruption. There will be no more points of order allowed if people are going to use the opportunity to raise-----

Senator Paul Gavan: I am just ensuring that Senators know what they can do.

An Cathaoirleach: That opportunity was available to Senator Gavan when he was on his feet. He is not allowed to contribute a second time. I cannot have Senators contributing a second time.

Senator Paul Gavan: It is too important.

An Cathaoirleach: Under the rules of the House, the Senator will have an opportunity

under the next grouping to raise issues-----

Senator Paul Gavan: I will not have the time. You all know now that amendment No. 11 will fix this.

An Cathaoirleach: Senator, please.

Senator Paul Gavan: Apologies.

An Cathaoirleach: I ask the Senator to respect the rules of the House. If Members are going to stand up claiming a point of order but, when I ask them whether it relates to the Standing Orders of the House, they say it does when it clearly does not, I would appreciate it if they instead respected not only the rules of the House, but also the Minister, who is on his feet replying, as is his right. That is the way we ordered the business.

Senator Mary Fitzpatrick: We want to-----

An Cathaoirleach: No. I will not allow anyone else to contribute now. The Minister is on his feet discussing group 3. We have agreed the rules and the procedure. The Minister without interruption.

Deputy Roderic O’Gorman: I need to engage with the Attorney General on the DPC’s advice on the application of section 39 of the 2004 Act and the amendment made to same in 2018. This matter is not contained within my Bill, which is still important if we are to maintain the database. This is relevant to the wider issues that we have all agreed need to be addressed in the context of the application of GDPR. I flagged it as something that we would have to address. Doing so has become even more urgent now.

An Cathaoirleach: Next is group 4 on the redaction of certain records. Group 4 is the subject matter of amendments Nos. 8 and 9 from the Dáil and Seanad Report Stage amendments Nos. 5 to 10, inclusive. Before I ask the Minister to speak on the subject matter of group 4, I will outline the procedure again, given that Senators are coming and going. Senators are entitled to speak once on this Stage. They are entitled to intervene in the debate under Standing Order 39, but they must ask the Member in possession to give way and, if they get that permission, will have 30 seconds to speak. That is it. Those are the rules and I am only enforcing the rules on which we have all agreed. I ask Members to respect that, especially when the Minister is on his feet. He is entitled to speak without interruption unless someone wishes to raise a valid point of order.

I call Senator Higgins first.

Senator Alice-Mary Higgins: What about the Minister’s amendments? I have amendments in this group. I can be brief.

An Cathaoirleach: I am sorry. Does the Minister wish to speak on group 4 first?

Deputy Roderic O’Gorman: These relate to the matter we discussed in the Seanad last week regarding personal stories. These sets of amendments make provision for that opt-in to redaction, working on the basis of restoring agency to those people who came before the commission. They deliver on that.

Senator Alice-Mary Higgins: I recognise that the Minister has listened to my comments

but there is an issue that has been raised by others, and my amendments for this group would simply allow the Minister, under the same section he has introduced, to oblige the commission to offer people a copy of their testimony along with the obligation on the commission in the legislation to consult people on the question of redaction. It is appropriate and, as others have said, it makes no sense not to do this. If the Minister accepts the amendment, it would be a requirement on the commission, which would be useful.

I agree on the point that has been made in that although it is not a subject of the Bill, there is the provision under amendment No. 11, which is before the House and which the Minister could potentially accept, that could explicitly deal with the concerns of the Data Protection Commission by specifying that Article 15 restrictions will not apply.

Senator Ivana Bacik: I support the amendments put forward by Senator Higgins that refer to the rights of access to personal data. It is the very issue that relates to the data protection commissioner's comments as reported. I welcome that the Minister has said he will engage with the Attorney General on those comments but I take issue with the comment that this is not directly related to the Bill. I certainly agree there are wider issues around access to information, which we all accept. However, this Bill has a very direct connection to the 2004 Act as section 4 directly relates to that Act as to the deposit of copies of records with the Minister. As it refers to the Act and deposits records with the Minister under the 2004 Act, the 30 year rule applies. Through this Bill and section 4 in particular, there is a direct link to the very provisions in the 2004 Act about which the data protection commissioner has expressed such concerns. We must be mindful of the comments of the data protection commissioner and bear them in mind. That points to the difficulties we have with this Bill.

Senator Lynn Boylan: I echo the point made by Senator Bacik on the relevance of the data protection commissioner's intervention on the Bill. When did the commissioner make those observations and did the Attorney General read those observations? If that happened, why would the Attorney General not recommend wording such as that in amendment No. 11 to make a correction to the Bill? It is directly related to the Bill. The House needs to know when the data protection commission made the observations, if they were made available to the Attorney General, and if they were, why did the Attorney General not recommend wording to fix those problems? The wording would be similar to that in amendment No. 11.

Senator Paul Gavan: I reiterate those points. This is so serious and all of us are aware of the issue. The good news is we have the opportunity to work collectively, put our party hats to one side and accept amendment No. 11. At the very least all of us should agree and act on this now.

An Cathaoirleach: The Senator knows that is not one of the amendments under discussion.

Senator Mary Seery Kearney: I disagree strongly with Senator Bacik. This is about the database and its preservation, and just because there is allusion to other matters it does not make them the central part of this Act. It is unfair to make that statement. With due respect, the only party politics being played arise from the Sinn Féin position of criticising the Government.

Senator Ivana Bacik: The points have been made respectfully so far but those points were unfortunate.

An Cathaoirleach: The Senator would be more than welcome to introduce a new Standing Order to deal with that but her comments are not relevant to the contribution. As it is now 5.15

p.m., I am required to put the following question in accordance with the orders of the Seanad of 22 October and 23 October 2020: “That Fourth Stage is hereby completed, that the Bill is hereby received for final consideration and that the Bill is hereby passed.”

Question put:

The Seanad divided: Tá, 22; Níl, 16.	
Tá	Níl
Ardagh, Catherine.	Bacik, Ivana.
Byrne, Malcolm.	Black, Frances.
Carrigy, Micheál.	Boyhan, Victor.
Casey, Pat.	Boylan, Lynn.
Cassells, Shane.	Gavan, Paul.
Chambers, Lisa.	Higgins, Alice-Mary.
Conway, Martin.	Hoey, Annie.
Crowe, Ollie.	Keogan, Sharon.
Doherty, Regina.	McCallion, Elisha.
Dolan, Aisling.	McDowell, Michael.
Fitzpatrick, Mary.	Moynihan, Rebecca.
Gallagher, Robbie.	Mullen, Rónán.
Garvey, Róisín.	Ruane, Lynn.
Kyne, Seán.	Sherlock, Marie.
McGahon, John.	Wall, Mark.
McGreehan, Erin.	Warfield, Fintan.
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 Ivana Bacik and Paul Gavan.

Question declared carried.

**Commission of Investigation (Mother and Baby Homes and certain related Matters)
Records, and another Matter, Bill 2020: Motion for Earlier Signature**

Senator Regina Doherty: I move:

That, pursuant to subsection 2° of section 2 of Article 25 of the Constitution, Seanad Éireann concurs with the Government in a request to the President to sign the Commission of Investigation (Mother and Baby Homes and certain related Matters) Records, and another

23 October 2020

Matter, Bill 2020 on a date which is earlier than the fifth day after the date on which the Bill shall have been presented to him.

Question put:

The Seanad divided: Tá, 22; Níl, 16.	
Tá	Níl
Ardagh, Catherine.	Bacik, Ivana.
Byrne, Malcolm.	Black, Frances.
Carrigy, Micheál.	Boyhan, Victor.
Casey, Pat.	Boylan, Lynn.
Cassells, Shane.	Gavan, Paul.
Chambers, Lisa.	Higgins, Alice-Mary.
Conway, Martin.	Hoey, Annie.
Crowe, Ollie.	Keogan, Sharon.
Doherty, Regina.	McCallion, Elisha.
Dolan, Aisling.	McDowell, Michael.
Fitzpatrick, Mary.	Moynihan, Rebecca.
Gallagher, Robbie.	Mullen, Rónán.
Garvey, Róisín.	Ruane, Lynn.
Kyne, Seán.	Sherlock, Marie.
McGahon, John.	Wall, Mark.
McGreehan, Erin.	Warfield, Fintan.
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 Ivana Bacik and Paul Gavan.

Question declared carried.

Health (Amendment) Bill 2020: Second Stage

Question proposed: "That the Bill be now read a Second Time."

Acting Chairman (Senator Pat Casey): I welcome the Minister of State, Deputy Feighan, and invite him to address the House. Each Member will have six minutes after that and we have a total of 45 minutes.

Minister of State at the Department of Health (Deputy Frankie Feighan): I thank the

Acting Chairman. It is great to be back in the House and to address the Seanad in this august Chamber. I address the House in respect of the Health (Amendment) Bill 2020, which concluded its passage through the Dáil earlier today. I welcome the support received in that House for the core principle of the Bill, which is to protect and safeguard the people of Ireland from the spread of Covid-19. There was support expressed in the Dáil today for the main purpose of the Bill, but there were wide-ranging views on the way the Government has had to introduce it. It is not ideal that we are in a position where we must debate a Bill that has some potential serious impacts in the space of an afternoon. However, my Government colleagues have consistently advised Deputies and, indeed, all the people of Ireland that we are living in unprecedented times when unprecedented decisions must be made within very short periods of time. I extend my gratitude to those who attended the debate in the convention centre today and to everyone in Leinster House. I thank everyone for engaging with the Government on this legislation even though we are operating in less than desirable circumstances.

As my colleague, the Minister for Health, Deputy Stephen Donnelly, stated in the Dáil this morning, the purpose of this Bill is not to penalise people. The Minister for Justice, Deputy McEntee, has also made this point. The Bill defines and narrows the existing enforcement powers that are already on the Statute Book. Operationally, the Garda will continue to engage, educate and encourage people when it comes to policing and monitoring compliance in respect of the Covid guidelines. It will only be as a last resort that the Garda will enforce.

Ireland's experience of this virus to date shows that the vast majority of people are following the public health measures, for which I applaud the nation. However, the highly contagious nature of the virus means that when we let our guard down for a short period, it spreads quickly, silently and sometimes with fatal consequences. Unfortunately, a number of people make a conscious decision to not follow the measures. Due to how easily the virus spreads, the actions of this group of people put at risk the sacrifices made by everyone else. When I say "everyone else", I refer to those of us who follow the guidelines when there is no penal sanction for non-compliance. We know that by making these sacrifices and following the recommendations, we are all helping each other to get the nation back to normality.

While solidarity and personal and collective responsibility are at the core of the national response to Covid-19, enforcement must also be available. Up until recently, the only enforcement power available, under the 1947 Health Act, has been what is called "a penal provision". This is a prosecution with a maximum penalty of up to €2,500 or six months in prison, or both, to be decided by the judge. As has been said in the House before, the "penal provision" has not been proportionate for most violations of the regulations but has been harsh which is why we have the legislation before us today. Rather than create new powers or penal provisions, the Government is attempting to revise, define and narrow the existing legal provisions so that the Garda and the people of Ireland have clarity on how they should behave during this pandemic. This legislation introduces tiered penalties or on-the-spot fines of up to €500. The exact amount of each measure is specified under regulations. For example, a fine regarding face coverings would no longer incur a penalty of up to €2,500 and-or six months in prison, but might, instead, incur a €50 on-the-spot fine. Ultimately, however, failure to pay the fine could be prosecuted, as per other fines in place. The Bill also redraws the existing penal provision, in that it creates lower levels of penalties for the first and second offences, and only allows the existing level of penalties for a third offence. In the case of dwelling events, the Bill only allows for the lowest level of penalty, which is for a first offence, for other measures.

If the Bill is passed, there would be five categories of enforcement. The non-penal category

would apply to measures included in the regulations as not allowed, but which carry no penalty. For example, the restriction on who and how many people can attend a sports training session is a non-penal provision. The penal category will have three levels of penalty, in court, for first, second and third offences. This includes, for example, violation of measures by retail outlets. The relevant provision category allows for licensed premises to be shut for the day, or for longer in the case of further offences. The fixed charge notices category allows for on-the-spot fines and includes, for example, domestic travel, face coverings and relevant indoor and outdoor events. The fifth and last category, concerning a dwelling event, is specifically for large social gatherings in houses, and allows only for the first offence penalties of penal provisions.

In summary then, the Bill provides for penal provisions under the Act to be prescribed as fixed penalty provisions, meaning that persons alleged to have committed an offence under a fixed-penalty provision may pay a fixed penalty in lieu of prosecution. It provides that on prosecution, different levels of penalties may apply to first, second and third, and subsequent, offences under the Act. Finally, the Bill provides for provisions to be prescribed as dwelling event provisions, meaning that if a garda reasonably suspects a breach of such a provision, he or she may attend at the entrance to the private dwelling and direct persons to leave that private dwelling or the vicinity of that private dwelling.

I will go through the Bill section by section. Section 1 provides that the “Act of 1947” means the Health Act 1947. Section 2 provides for the insertion of a definition of “fixed penalty provision”, “dwelling event provision” and “penal provision”. Section 3 provides for the insertion of subsection 31A(6C) on fixed penalty provisions. Fixed penalty provisions allow for a fixed payment notice to be served on persons in respect of an alleged offence. The person may opt to pay a fixed fine within 28 days rather than face prosecution in court.

Subsection 31A(6C)(b) sets out the matters that should be taken into account when deciding to prescribe a penal provision to be a fixed penalty provision. These matters include the nature of the offence, how prescribing it would prevent the spread of Covid-19 and the impact prescribing it might have on the normal functioning of society. Subsection 6C(c) provides that the Minister may make regulations for the form of notice and the process to be followed, while subsection 6C(d) sets out that the Minister must consult with the Minister for Justice and Equality before prescribing a penal provision as a fixed penalty provision.

Subsection 6D amends section 31A to enable the Minister to prescribe penal provisions to be dwelling event provisions. Subsection 6D(b) sets out the matters that the Minister should take into account when prescribing a penal provision to be a dwelling event provision. These matters are similar to the matters relating to the fixed penalty provision but also include the risk of Covid-19 in indoor or confined areas. This makes sense because the alleged offence is occurring in a private dwelling, indoors. Again, as with the fixed penalty provision, subsection 6D(c) sets out that the Minister must consult with the Minister for Justice and Equality before making a decision.

Subsection 6E provides that regarding proceedings for an offence in respect of a dwelling event provision, the event organiser shall be assumed to be the occupier unless proved otherwise. This means that if an event happens in a private dwelling that is not allowed under the regulations, the occupier of the dwelling is assumed to be the organiser. The offence here is by the organiser.

The Bill also provides for a new subsection setting out tiered penalties. The current sanction

is a fine of up to €2,500 and-or six months in prison. It is proposed to replace this one-level provision with a three-tiered provision based on the number of offences committed. This provision applies when someone charged with an offence ends up in court, and it is separate to the fixed penalty provision. If the matter ends up in court, there is then a reduced tariff for a first offence of a fine of no more than €1,000 and-or one month in prison, a tariff of €1,500 and-or three months in prison for a second offence and a tariff of €2,500 and-or six months in prison in respect of third and subsequent offences. I note here that in a situation where someone is given a fixed penalty notice and does not pay in 28 days, then it automatically becomes a court matter and these penalties would then come into play. The new subsection also provides for a judge to impose a sentence of up to €2,500 and-or six months in prison where there are aggravating circumstances. This means that if the judge feels that the offence is particularly serious, especially on public health grounds, then the judge can impose the highest tariff.

The Bill also provides in section 3(c) for the substitution of a new definition in section 31A(16) of “event organiser”. For a private dwelling, an “event organiser” is “a person who arranges, organises or manages the event, or otherwise causes or permits the event to take place”. In a place other than a private dwelling, the “event organiser” is a person who publicises, arranges, organises or manages, or receives some or all of any proceeds from the event. It also defines the terms “licence”, “occupier” and “owner”.

Section 4 of the Bill provides for fixed payment notices by the insertion of a new section 31C. Subsections 31C(1) and 31C(2) provide for a fixed payment notice to be served on persons in respect of an alleged offence. The person may opt to pay a fixed fine within 28 days rather than face prosecution in court. If a decision is made not to give a fixed payment notice, that does not prevent the initiation of a prosecution.

Section 5 of the Bill relates to the private dwelling provisions I discussed earlier. To reiterate, the Minister for Health can designate a provision in a regulation to be a penal provision and a dwelling event provision. If that happens, then this section of the Bill comes into play. It provides for additional powers for the Garda under the proposed subsection 31D(1), where if a garda suspects a person is loitering with intent to attend an event in a private dwelling “in contravention of a private dwelling provision”, the garda may direct that person to leave the vicinity. Under the proposed subsection 31D(2), where a garda suspects “that an event in contravention of the private dwelling” provisions is under way in a private dwelling, the garda may direct the occupier of the private dwelling to require and cause the other persons to leave. The proposed subsections 31D(3)(a) and 31D(b) permit a garda to attend at the entrance to a dwelling and to request contact details for the occupier. Subsection 31D(4) provides that it is an offence, “without reasonable excuse, to fail to comply with a direction given by” a garda under this section and subsection 31D(5) sets out the penalties to apply. Those are the details of the Bill.

This Bill is all about enforcement. As the Minister for Health, Deputy Stephen Donnelly, and the Minister for Justice and Equality, Deputy McEntee, have stated on an ongoing basis, however, the members of An Garda Síochána will continue to engage, educate and encourage; they will only enforce as a last resort. People in Ireland are looking to the Government as leaders and to act appropriately, proportionately and fairly.

Should the Bill be passed, it will not simply be a question of making a regulation and then handing out fixed penalty notices. The regulations will be considered carefully and drafted appropriately.

I would ask Senators to remember that the overwhelming objective here is to enhance compliance with public health guidance, and regulations, with these penalties as only one side of it. Any system of enforcement only works if people can see it being used appropriately, that the sanctions are proportionate and that it is aimed for the greater good. I can say that these are our aims. I commend the Bill to the House.

Acting Chairman (Senator Pat Casey): I call Senator Malcolm Byrne who has six minutes to be followed by Senator McDowell.

Senator Malcolm Byrne: I thank the Minister of State for coming into the House. It is a pity, in many ways, this Bill must be introduced because the overwhelming majority of citizens in the State are trying to do the right thing. We need to acknowledge that fact in this debate. It is a pity we cannot legislate to address stupidity but some people are blatantly seeking to disregard the public health guidelines which are in all our interests.

In the approach the Government is taking where a measure needs to be taken to sanction those flagrantly breaching public health guidelines, we must reinforce the positives. We must send out a message to people about what they can do to give them hope and encourage them to follow public health guidelines.

In north Wexford where I live, as the Minister of State will be aware, we have seen a significant spike in cases. That is causing serious concern in the community. The message we have put out in our own local community is to reinforce the positive messages of communities working together, washing our hands, keeping the distance and wearing a mask properly. We have been seeking to reinforce those under the slogan: “use your head, stop the spread.” It is also about ensuring we support local businesses. I ask the Minister of State during this difficult time to ensure those positive messages are sent out as well as setting out a penal sanction.

It is important any anomalies that may exist or are perceived to exist are addressed. One concern I have, which I have raised with the Minister, Deputy Donnelly, relates to the retail sector. Those businesses engaged in the sale of clothes in particular are concerned some supermarkets and large outlets continue to sell clothes while menswear stores and boutiques are not allowed to do it. It is ridiculous that I cannot go into a local menswear shop to buy a pair of socks, yet I can find them on sale in one of the large supermarkets. Other retail outlets are trying to get around the regulations and because they are selling PPE equipment in one corner of the store they think they can open. This is very unfair to the independent main street retailers. I ask the Minister of State to address that.

All of us as Oireachtas members have faced a variety of queries from people who are trying to do the right thing but they are not certain about it. I have asked that we consider setting up a Covid helpline within the Minister of State’s Department, if not for the general public then certainly for Members of the Oireachtas, to ensure that when we have specific queries, concerns or issues that may arise we are able to get a very direct answer. We have all, as I am sure has the Minister of State, received questions from people to which we do not know the exact answer. It would help if the Department could set up such a helpline.

It is a pity we must introduce these penal sanctions but it is necessary because a small number of people in this State are not merely making mistakes but are deliberately setting out to breach and flaunt the law. Sinn Féin is seeking to remove the requirements around imprisonment but I think they are necessary. Where there are repeated breaches of public health guide-

lines we need to have the possibility of the sanction of imprisonment by the courts because some people do not care about fines. The thugs we would have seen in the city centre in recent days abusing members of the Garda Síochána will not care about fines and the option of having to imprison them is essential. It is also essential to continue to have the confidence of the overwhelming majority of people in this State who want to do the right thing. They are worried about their loved ones and their businesses and they see these thugs out on the street abusing members of the Garda who are doing their best in very difficult circumstances; we need to take action against thugs.

It is unfortunate a very vocal but unrepresentative group has sprung up at the height of a pandemic that is threatening people's lives and businesses and that some people do not believe any rules apply to them. It is unfortunate we must introduce these measures but it is necessary. All of us in this House must ensure we stand up to those thugs who are out on the street abusing the members of the Garda. There have been some in these Houses who have given platforms to these people in the past but it is not acceptable to give platforms to the likes of Gemma O'Doherty and some of her cohort. It is not acceptable that they continue to go out and abuse members of the Garda who are workers on behalf of the State. We have always had a police force that works on the basis of public acceptance.

While I wish, as I am sure everyone would wish, this legislation was never necessary, we know that because of a small minority we now need to bring it in. I will strongly support the legislation. I believe, as I am sure do the majority of people, that for the people who are flouting it, fines are not good enough; we need to consider imprisoning them.

Acting Chairman (Senator Pat Casey): I remind Senators not to make reference to people outside the House. I call Deputy McDowell who has six minutes.

Senator Michael McDowell: First, I must protest that this legislation has been rushed through without adequate debate. There is no excuse for a situation where Dáil Éireann is considering a Bill in the morning and it comes to us in the afternoon especially when this Bill is badly drafted. I draw the Minister of State, Deputy Feighan's attention to one or two aspects of this Bill which he may regret not having spent slightly more time with his colleagues putting in place.

I draw his attention to the definition of "occupier" at the bottom of page 6 of the Bill. It states:

'occupier' means, in relation to a dwelling—

(a) a person who—

(i) resides in the dwelling, and

(ii) is the owner of the dwelling,

or

(b) a person who resides in the dwelling pursuant to a licence (except where the owner of the dwelling also resides therein);

In other words, there are two categories of people. The occupier is a person who resides in the dwelling and is the owner of it and that includes a tenant by the way. Second, a person who

resides in the dwelling pursuant to a licence, therefore, somebody who is there, permitted to be there by the owner, except where the owner of the dwelling also resides there. A person who is a wife, a husband, a partner, a son, a daughter or a guest living in a house is not an occupier if the owner of the house also resides in that dwelling. That is the first mistake that has been made here.

I also draw the Minister of State's attention to page 8 of the Bill which states: "where a member of the Garda Síochána suspects, with reasonable cause, that an event in contravention of a dwelling event provision is taking place, he or she may direct the occupier to require and cause all persons attending the event ... to leave immediately." Therefore, a garda cannot direct the son or the daughter of the person who owns the house because they are not a licensee under the badly drafted definition of "occupier" because the owner of the house actually lives there. If the owner is not there, a garda cannot direct those people to get people to leave the House. That is a big mistake.

Also subsection (3) near the bottom of page 8 states "require the occupier to provide the member with his or her name". Therefore, the son, wife or husband of the owner where the owner resides in the house, even if the owner is not there, cannot be asked to deliver his name, to clear the House or whatever. This is the kind of mistake that is made when legislation is rushed. The term "occupier" is defined in the Bill as someone who resides in the dwelling, and is the owner of the dwelling, or, alternatively, "a person who resides in the dwelling pursuant to a licence [that would be a family member] (except where the owner of the dwelling also resides therein)...". A garda cannot ask the wife, the son, the daughter or whoever else, or the guest or the cousin, who is there for her or his name and address and cannot ask her or him to get people to leave the house. This would not have happened if this Bill had been carefully thought through. It is a huge hole in the Bill. It means that a garda coming to a house, knocking on the door and demanding to see the occupier and asking who is the owner of the house, would be told that the owner of the house is away. On asking, "Who are you?" the garda would be told that he is speaking to the owner's son. If the garda said that he wanted the son's name and address and wanted him to clear the place out, he would be told that he had no power to do so under the section because the son is not deemed to be the occupier because the Bill was badly drafted in the first place.

I do not understand for the life of me why we could not have had another 48 hours to look at this legislation to see whether there were mistakes in it. There is a huge hole under the waterline of this legislation. If a member of An Garda Síochána arrives at the door of a house, the person who opens the door and says he is the son of the owner is not the occupier if the owner resides in the house even though the owner is not there. What a crass error to make, and it has been made here. The powers we are rushing through will be useless in the hands of the Garda because of the rush with which this legislation has been put through.

I need hardly point out to the Minister of State that the Bill, on page 5, states, "In proceedings for an offence under this section consisting of a contravention of a dwelling event provision, it shall be presumed, unless the contrary is proved, that the occupier of the dwelling in respect of which the offence is alleged to have been committed was the event organiser." The poor husband who was not there at all shall have a presumption against him. By the way, that presumption cuts the other way because the person who actually ran the drink party and invited in all his pals will be presumed not to be the event organiser until the contrary is proven.

This Bill is a joke. It is seriously defective. It is coming here in circumstances where it can-

not even be amended now. It was rushed up here from the convention centre for us to look at. We were not given any opportunity to put amendments to it. It is thrown at us in a hurry. It is not workable. A garda will neither be able to ask somebody at a door who is a son, daughter or wife, for his or her name nor will the garda be entitled to ask him or her, because such persons are not occupiers, to get everybody in the house to leave. What a joke.

Acting Chairman (Senator Pat Casey): Senators Conway and Ward are sharing time. They have three minutes each.

Senator Martin Conway: I welcome the Minister of State, Deputy Feighan, to the House.

I also welcome this Bill because a more graded approach was necessary. We will have a step-up, step-down system of fines, more realistic fines and more workable fines. Of course, we do not want to see people being fined at all. We just want that as a deterrent. We want to see the majority of people continue, as many are, abiding by the necessities to eliminate this awful virus.

As unpalatable, as difficult and as challenging as it is, I support the decision to move the country to level 5 in an attempt over the next six weeks to suppress the virus. It has put hundreds of thousands of people onto the pandemic unemployment payment. It has resulted in thousands of businesses having to close their doors and people having to change their routines and their lives. People have to work at home and work remotely. People cannot travel beyond 5 km unless it is for essential work or medical, shopping or care requirements. These are difficult. They are challenging. They are unpalatable. We do not want to do them. We should not have to do them. Unfortunately, we have no choice but to do them.

I am appealing to the people, each and every one of us, to play our part to do our bit to be leaders in our society, in our communities and in our households in order to help suppress Covid-19 because if we do not get a handle on it and if we do not see the number of cases reduce, people whom we love and whom we care for, people who are elderly, people who are vulnerable and people who are in care homes, will unfortunately get seriously ill and will die. Today, we have 37 people in ICU. Let us get that number down. Let us all work together to beat this virus. As an Irish society, we can do it.

In terms of the Bill, it may not be perfect but it is necessary.

Senator Barry Ward: Cuirim fáilte roimh an Aire Stáit.

I agree with what has been said about this Bill. It is unfortunate but it is necessary. The comments of other Senators in this regard are well made. We need to equip the Garda with the powers it requires to enforce the regulations. That is for the benefit of everyone - all members of society but, most particularly, those who are vulnerable to Covid-19 and those who are at risk.

The hope, in passing this legislation, is that those powers will never be necessary. I welcome what the Minister of State said in his speech about the continued operation by the Garda of the police-by-consent model whereby they will continue to engage with the public and they will take all steps they possibly can before they need to enforce the law. We hope, first of all, that these powers will not be required.

In relation to the provisions that are there for prosecution in court and possibly incarceration

tion, we certainly hope that none of that will be necessary. The idea is here that there is already the carrot from the point of view that the Government has taken but this also brings the stick. The most unfortunate aspect of this legislation is that it turns the conversation onto exactly this kind of thing and distracts from the message that the Government has been trying to put out, which is that we should be doing this by consent, that we should be working with people, that we should be putting in place supports which we are, and that we are working with people to facilitate their continued survival, be it in a business context, in a social context or in a mental health context, in any way we can. Unfortunately, this legislation turns the conversation a little more towards punitive measures, which are secondary to those other measures.

Finally, I agree with what Senator McDowell has said. As I have stated on many occasions in this House, the notion of rushing through legislation in all Stages is lamentable in every circumstance. I do not disagree that it is occasionally necessary. However, we have a poorly drafted Bill here. My amendment No. 20 deals with exactly the issue that Senator McDowell raised about the definition of “occupier”. There is a perfectly valid, tested and tried definition in section 151 of the Broadcasting Act 2009 that would, in my view, cover the bases. We recognise that, as the Minister of State comes to this House today, it is difficult, if not impossible, for this House to amend this Bill. That reality is a bit of a slap in the face and a gesture of significant disrespect for the role the Seanad plays constitutionally in the passing of legislation. I do not blame the Minister of State for that. As a House, we should be making clear that we do not accept the model whereby, as has happened on a number of occasions in the context of Covid emergency legislation, legislation should pass all Stages in a single leap, as it will today.

However, I support the Bill. However unfortunate, it is a necessary provision.

Senator Elisha McCallion: I begin by repeating what I said in the Seanad yesterday and, indeed, many of my colleagues have been saying over the past number of days, that is, that Sinn Féin in opposition wants to achieve the same thing as the Government in relation to this pandemic. We want to see the virus brought under control in the interest of saving lives and we want to be constructive in opposition. However, as we have been saying over the past number of days, the level of co-operation between the Government and the Opposition over the past three or four months has been in decline in regards to co-operation to deal with this pandemic. At the start of the pandemic, there was very good co-operation. We are not seeing enough of that at present. We are certainly not being briefed enough and communication is lacking.

We are all tired of Covid. People are tired of Covid. People are tired of the media speculation, tired of renewed restrictions and certainly tired of the Government and the chaos seen in government in many circumstances. Our country is trying to cope with a virus and, unfortunately, we are doing so by imposing some of the tightest restrictions. In the here and now, we must protect public health against the virus and those restrictions are necessary. However, I cannot help but feel we could have done a lot more in the past few months. We are where we are because we need to protect the health system from being overwhelmed but this is a broken health system, which can barely cope with a normal winter flu surge, never mind a global pandemic. The Government has missed opportunities to make sustainable improvements in the health system through its winter plan and in its budget. We are in level 5 restrictions because of a number of failures from the start. The Government has had ample opportunity to get contact tracing right and build it up to capacity. This Government, the Minister for Health, the Tánaiste and the Taoiseach have ignored calls and warnings from Senators, Deputies and the general public to pay attention to the evident problems. The Government consistently denies there are issues with testing and tracing.

The Bill gives extreme powers to the Minister for Health to make regulations in future. These include the power to set fines and determine the types of regulations that are subject to fines and the types of breaches that have to go to court. This type of legislation needs proper scrutiny and there is no excuse for not having it. The amendments put forward by Sinn Féin seek to address this issue, although it is unlikely, as a number of Senators have said, that we will be able to debate any of the almost 50 amendments.

Sinn Féin has also tabled amendments to remove the threat of imprisonment. I listened to Senator Byrne's point on repeat offenders but that is not what the Bill addresses. This legislation provides that a prison sentence may be imposed on first-time, second-time and other offenders. We have put forward amendments to address this issue because custodial sentences are not appropriate in this instance. I do not accept the decision to rule the amendment out of order. I appreciate it was not the Acting Chairman who made the ruling. Amendment No. 37 proposed to introduce measures to bring about regulations for businesses such as meat factories, many of which disregard regulations and sometimes put workers' health and public health in danger. It is regrettable that it was ruled out of order.

In March when this nightmare began, we saw widespread solidarity throughout the country. We must try to regain that solidarity and find ways to rebuild confidence among the community. Unfortunately, this Bill in its current form does not do that. Most people follow guidelines as best they can and abide by the rules to protect each other and the most vulnerable. The sensible approach for us all must be, in the first instance, to encourage, as the Garda has done, those people who are not compliant to understand the guidelines and comply for the greater good. If people continue to refuse to obey the rules, there may be circumstances in which some level of enforcement is required. Sinn Féin shares the concerns articulated by Garda representatives and various bodies that the overly punitive approach proposed by the Government in this Bill risks alienating people even further. It could undermine efforts to regain the solidarity needed to achieve high levels of compliance. The Government's approach to this legislation could make the situation worse. High numbers of fixed penalty notices and threats of imprisonment for breaches of the guidance are not proportionate. We have proposed amendments seeking to address many of these issues. It is extremely regrettable that we will not be able to vote, I assume, on any of them.

I reiterate that we all support the public health messages and interventions which will allow us to try to get the virus back under control. However, these restrictions are hard and people need reassurance. People need to know there will be solid plan when we emerge from the next few weeks of restrictions. Without the amendments Sinn Féin and others have put forward, it will be impossible for us to support this Bill. I hope the Minister will give consideration to the many amendments before him to make this Bill in some way appropriate.

Senator Annie Hoey: I was struck while reading this Bill by how, in such a short space of time and with the Government willing to tackle a crisis, compressive - albeit flawed, as Senator McDowell pointed out - and far-reaching legislation can be written, printed, amended, debated and passed through both Houses of the Oireachtas. While I agree the health crisis is of major national importance and is arguably one of the most important issues facing both Houses today, I find myself wondering how effective this Government could be in tackling other crises facing society if it showed as much willingness to find solutions to issues such as evictions, homelessness, the lack of prosecution of domestic abusers and the seemingly eternal inability to curb Ireland's CO2 emissions.

There is an innate hypocrisy in the Government's response to this crisis. One example is housing and homelessness. When the Government wants to ban large gatherings in a short period of time on the grounds of health and safety, it can implement a fines system and give the Garda new authority to enforce it. However, parties - not house parties but political parties, which are much less craic - especially Fine Gael and Fianna Fáil, seem to have struggled for the last five years with the largest public health problem pre-Covid, namely, housing and homelessness. I need not go through the negative impacts of homelessness. Being homeless is bad for physical, mental and material health. Rough sleepers see their health deteriorate at a rapid rate while living on the streets. Children living in hotel rooms experience more childhood injuries than those with access to outdoor space. We all know the impact of homelessness. It is, therefore, incredible to think that only today we passed the much-needed Residential Tenancies Bill but the Bill only allows for a ban on evictions during level 5, with a further grace period of ten days. How can we amend the Health Act to provide for far-reaching regulations and restrictions to our civil liberties extending to next June, that is, seven months, yet we will only extend the eviction ban for the duration of level 5? That does not make sense. Surely when we say we must bring in these drastic restrictions to try to stem the spread of Covid-19, we should also ensure that not one more person will become homeless during the same period. I do not understand the reasoning. If only the Government would respond with such speed, support and strong action to any other life-threatening societal woe that it does to Covid-19.

I will raise for what feels like the hundredth time since being elected to the 26th Seanad my annoyance and anger at how this Government treats the Opposition. We may as well have empty seats on this side of the House for all that the Green Party, Fianna Fáil and Fine Gael care for parliamentary process. The disrespect shown to elected representatives of the Dáil and Seanad by ramming Bill after Bill through the Houses and allowing no meaningful debate is disgraceful. To print Bills 48 hours before we are expected to read and propose amendments to them is disgraceful. It is an authoritarian attitude which looks down on process, debate and opposition and deprives the public of proper scrutiny of legislation being brought forward by the Government.

I remind other Members that the purpose of the Seanad is to scrutinise legislation as it passes through the House. There are people here representing a variety of areas, constituencies and civil society groups but the one thing we are all supposed to do when we trot through the door and leave our representative group behind us is scrutinise legislation. To hurtle through legislation at breakneck speed is bonkers. It cannot be good for democracy or for ensuring robust legislation and fair and equitable laws. It is not good for maintaining the goodwill of this side of the House and our willingness to co-operate. We want to work with the Government to serve the people of Ireland. We want to scrutinise legislation. We want to offer constructive opposition but the Government is making that an extraordinarily difficult job.

My sense is that, as has been the way since we were elected to the Seanad, but especially in the past few days, the Minister will refuse outright to accept any amendments put down by the Opposition and we, on this side of the House, will valiantly try to engage and legislate effectively as we were elected to do. We recognise we are in extraordinary times and these call for extraordinary measures but they do not call for an extraordinary abandonment of the legislative process. Without debate, there can be no democracy and the behaviour of Fine Gael, Fianna Fáil and the Green Party in both Houses in the past while tells me that the Government parties are happy to do without any debate in order to see through their legislation. What does this say about democracy in Ireland today?

We will support some of the amendments and we recognise the extraordinary need for this legislation at this extraordinary time. We are extraordinarily fed up, disappointed, annoyed and teed off at the fact that everything is being rammed through, one day after another, and we have no time to engage in the legislative process for which we were elected. It is unacceptable to the people who elected us, to democracy and to the people we are supposed to ensure we have robust and fair legislation.

Senator Alice-Mary Higgins: I will try to be brief, given that every Bill today is being rushed through all Stages. They will all have been guillotined before a full debate could happen, even in the compressed form of debate that has been allowed when Bills are pushed through all Stages. There will have been five guillotines in two days. These practices, as Senator Hoey noted, are not just disrespectful but damaging to democracy. The Minister of State, along with Ministers or other Ministers of State who appear before the House later, may plead the defence of “certain emergency circumstances”. The problem, however, is that a similar approach, of railroading past Stages, of assuming there is nothing to be learned from the Opposition benches about the quality of legislation, and of non-meaningful engagement, has been applied throughout the past few months, not simply this week. Numerous Bills have been either pushed through all Stages or pushed through a combination of Committee and Report Stages. That is a real concern. This week, the guillotine has returned and is being used on five Bills.

It is bad for democracy when legislation is rushed in this way and the Stages of legislative scrutiny are skipped, but it is also really bad for the legislation in question. Senator McDowell pointed out just some of the problems with the Bill. Definitions that do not match up to how the powers are meant to work, for example, are exactly the kind of problem that can be fixed if there is a gap between Committee and Report Stages. That is exactly what the gap is for. It is not about scoring points but creating better legislation. Doing otherwise is a serious concern.

On the question of additional powers, they are not something the Garda has called for. The Policing Authority has been clear that this is not what it sought. The Garda Commissioner stated that if there were to be fines for breaches, the directions to the public and Garda members would need to be crystal clear. They are not crystal clear; they are muddy, ambiguous and there are areas for interpretation or where it is not clear who is liable. They are concerns. As I stated to the Minister of State’s colleague in the Department of Health when she appeared before the House, we need to be clear about the failures in engaging and dealing with the Covid crisis thus far. There have been some areas of success but others of failure and shortfall. The latter have not been through a lack of powers but through failures in policy. They have been in cases where there has been either the wrong policy or where the right policy has been wrongly implemented. We were told we needed to rush through the powers to ensure that pubs would close. I do not know to what extent that legislation was used. Have there been numerous cases where the Garda has been able to use those powers and where, otherwise, pubs could have said “Go away.” and kept going? I do not know, but the number of Covid cases has continued to increase and the measures granted at that time have not significantly contributed in a way that we can quantify, although if there is evidence of that, it might be useful.

Now the Government is seeking new powers and I have tabled a number of amendments in respect of them. One of the fundamental points, which I have made in a few amendments, is that there is a public duty to equality in human rights. Within that, there is a duty in respect of non-discrimination. It does not give me confidence that the Government is moving through the legislative Stages in this House with such speed. There is a further duty of the Department to ensure that any regulations or fines made under the legislation will be proofed to ensure they

are considerate and mindful of the public duty to equality and the public obligations to human rights. Has that been addressed?

Senator McDowell pointed out some flaws and gaps in the Bill in regard to definitions. I am also concerned about the section that specifies how fines might be given to those who a garda believes may be about to go to a party. The language is in a future tense - that such persons be about to go to a party or about to enter a premises. The garda may give a direction and the fine is for not complying with that garda's direction, but there is a concern because that is very ambiguous. It again shows a certain mindset in creating these solutions where the legislators imagine that everyone lives in houses. In an apartment building, someone may just be going to his or her apartment. If a garda then directs the person to leave the area and the person says he or she just wants to go home, and if the garda's direction is wrong, the person's non-compliance with it may leave him or her open to a €1,000 fine. It will not be crystal clear if that is the standard.

I recognise that measures need to be taken, although I do not believe that these are the key ones. There may be some merit to the regulations but the fundamental problem is that the period lasting until June is excessive. If we are able to give only six weeks' protection in respect of evictions, surely we need a similarly cautious approach when giving the authorities the kinds of sweeping powers in the Bill.

Senator Timmy Dooley: It is regrettable, in the first instance, that we in the House have to bring forward legislation such as this. It is symptomatic of a desire on the part of certain people to ignore the basic guidelines. Looking through the window of where society currently is, there is the zero-Covid side on one extreme and, on the other, the herd immunity analysis. The reality is that most people are somewhere in the middle. They want to do what is right but they want to live with Covid. The Government will have to move more quickly to set out a strategy for how we will live with Covid over the coming months.

I listened to some of the debate in the other House. Sadly, a couple of Deputies, probably for political gain, took an extreme stance on the issue, rejecting the notion of working with the authorities on it. That kind of dog whistle from the Parliament gives rise to what we saw in Grafton Street on Wednesday night last, which is regrettable. I would very much prefer if we were not moving to level 5 and I have publicly stated we should not have done so. I think we should have given level 3 more time, but I will not harp on about it in the Chamber because the decision has been taken by the Government and it is now up to all of us who believe in democracy. There have been some fiery contributions, with people raising questions about this democratic institution, but this House and the other were democratically elected and decisions have been taken.

Turning to the legislation, I will defer to the former Attorney General when he raises the serious points he did. He did not do that for political gain or to grandstand, but as a practitioner of the law who fully understands the problem. It speaks to the issue of rushing through legislation. This is an emergency; why could we not have sat over the next couple of days? There are rare occasions where the House has to sit on a Saturday and a Sunday, and I do not think any of us would object to that. There were debates on other, previous items of legislation where I worried we were rushing through matters, including earlier today. We need to get serious about thrashing out legislation. There are people in the House with experience, such as Senator McDowell as a former Attorney General and a senior counsel, who can pick up legislation and immediately see holes in it. We will have to do our work a little better over the coming months.

Senator Eugene Murphy: There is one Senator's opinion that I always take into account and that I always enjoy listening to. I would prefer not to be rushing through legislation. When I listen to Senator McDowell, whom Senator Dooley and others referred to as a very eminent legal person, on aspects of this Bill, I take his comments seriously and I do not rubbish them. His point is very well made. I would much prefer if we were in more normal times and could give plenty of time to debates. I am not a fan of rushing through or guillotining debates. While I accept we are in a difficult situation and uncharted waters, we could have done some of this next week. I was willing to come to the House next week, as I am sure were many others.

I agree with some aspects of the Bill. One of the biggest complaints I heard in my part of the country was that the Government was making announcements but the Garda could not do anything. People want some of these regulations, although perhaps not all of them. We hope they will bring people to realise that we are in a very serious situation. The Minister of State, Deputy Feighan, who is from the same county as me, will try to take into account what I am saying, although I acknowledge Senator Ward's observation that we probably cannot change anything in the Bill now.

Incidents such as the event the Garda had to deal with last night are regrettable. I will not discuss the matter in detail because 12 people were arrested. A soft approach was taken. I am told there was no hard action taken by the gardaí who were present but this is dangerous for society. In introducing legislation, we must take into account that some of the moves we make may benefit people such as those who gathered last night, rather than benefiting society. I hope this legislation will not have to be used. I acknowledge, as might the Minister of State, that some points, particularly relating to house gatherings, probably require clarification.

Senator John McGahon: The point I will make has nothing to do with the Minister of State, Deputy Feighan, who is the Government representative in the House today. I have spent the past two days listening to Senators from all sides talk about rushing through legislation. Senator Ward spoke eloquently on this just now. It becomes a little like the boy who cried wolf when we continuously argue that Bills are emergency legislation which we need to get through. As a Government Senator, I find it increasingly difficult to continually defend emergency legislation.

On a more positive note, for any Members of this House who wish to be elected to the Dáil at the next election, the Minister of State provides a blueprint, having been elected and made a Minister of State on his first day. I congratulate him on having never lost an election in 21 years. Many of us have lost elections.

I did not plan to speak in this debate but I was watching from my office and when I heard Senator Byrne speak so eloquently about some of the anti-mask protests I wanted to comment. We always need to encourage people to go along with wearing masks and do it by consent but some people will continuously flout that. Their opposition to the democratic institutions of the State is motivated by such hatred that they will flout the regulations at every opportunity. I listened to the points made by Senators Higgins and McCallion that perhaps these are too prohibitive or that we might be going too far by fining people.

Senator Elisha McCallion: I made a different point.

Senator John McGahon: My apologies. The Senator argued that the regulations may affect the solidarity of people. I do not believe it will. I believe it will actually enhance people's

solidarity as I will explain. People have often said to me that they and their family are abiding by the rules and breaking their backs to do the right thing, yet they constantly see people on Facebook and other social media going out of their way to flout the regulations. They ask why there is no deterrent for those people, and why are they not being fined for continuously breaking the law? It is a last resort. Gardaí will not walk around with a notebook and pen doling out fines left, right and centre.

One Saturday six weeks ago, I was in Dublin and got caught up in the middle of one of these bloody anti-mask protests while waiting for a bus. The abuse that these head-the-balls, for want of a better term, gave to an elderly couple wearing masks who were waiting beside me. Protesters were sticking mobile phones in the couple's faces and telling them to take off their masks. It was madness of the highest degree and utterly wrong.

Senator Malcolm Byrne: Hear, hear.

Senator John McGahon: That is why this legislation is needed. Senators McDowell and Ward and others have pointed out various flaws. That is a problem that arises when Bills are rushed through the House in a day but I still fully support the Bill.

One of the things I find most galling about the anti-mask protests, which I saw on the day I was caught up in one, is the use of our national flag, the tricolour. These self-described patriots are the opposite of patriots. The real patriots are the doctors, nurses, teachers and front-line staff who have been fighting the battle against Covid day and night since it arrived on our shores at the start of the year. They are, and should be, applauded every day in this country. Those who go onto the streets to protest, cause upset, rabble-rouse and undermine the democratic institutions of this State are not patriots in any sense of the word. It is important that Members of this House and the public take a strong stand against them and say that behaviour is not acceptable. We will increase solidarity among people if we decide that something must be done when people repeatedly flout the laws of the land, put people in danger and give a two-fingered salute to everyone who goes along with the regulations. There must be some sort of deterrent. Senator Byrne alluded to going so far as imprisonment. I do not know if I would go that far but the Senator is not far wrong. We have seen this online where people walk around with their phones shouting and screaming at people, almost as if it was a badge of honour. I have seen them shouting and screaming at ushers and other members of staff here as they came to work. That is utterly wrong. The Minister of State is doing a great job and it is great to see him in the Seanad. This legislation is important to tackle those people.

Senator Sharon Keogan: There is no greater tyranny than that which is perpetrated under the shield of the law and in the name of justice. I oppose this Bill, both its spirit and letter. I also oppose the way that it and other measures such as the extension of the sunset clause for Part 3 of the Health Act 2020 and other draconian legislation which underpins this Bill are being railroaded through the Oireachtas with little or no time for pre-legislative scrutiny or debate on amendments.

Speaking as an Independent Senator, without access to the machinery of the State or a party, I believe this hastening and compressing of the legislative process is extremely prejudicial. We should make no mistake, the fundamental rights and freedoms of the people of Ireland are being seriously eroded by the lockdown restrictions and the introduction of harsh enforcement powers and criminal sanctions, including fines and imprisonment to force compliance. The Government tries to blame the virus for damaging the health and wealth of the nation, when it is the

Government that is doing so with its repressive lockdown policy. There is no end in sight. It has no real solution to allow us to live with this virus. People are not stupid. The Government should not be treating them as such. If the Government had a sensible and sustainable plan to deal with the pandemic and allow people to get on with their lives, the people would adhere to reasonable and proportionate measures such as hygiene and social distancing. Criminalising people is a sign of failure on the part of this Government and that which preceded it. With this Bill, the Government is kicking people when they are down. It is losing the support and confidence of the people day by day with its ill-conceived, counterproductive and repressive measures. I oppose the introduction of further powers permitting the Minister to make regulations regarding fixed-penalty fines under section 31A of the Health Act 1947, as amended. The policing and enforcement powers and the creation of new criminal offences, fines and sanctions are quite extraordinary.

At a time when the people's morale is low, when they are under financial pressure, socially isolated, vulnerable and often unemployed and when the dole queues are expanding, we are kicking them. The Government has proposed a measure whereby members of the public can be fined €500 on the spot by members of An Garda Síochána for doing things that might not pose the slightest risk to anyone. In the context of prosecution, people can be fined up to €2,500 or be imprisoned for up to six months. I question just how fair, necessary or proportionate this is. I question whether these measures are necessary. I oppose the intrusion of An Garda Síochána into the lives and homes of innocent people.

I know very little about legislation. I know, however, that when someone like Senator McDowell points out a flaw and Senators from the Government party do the same, the Minister of State has a choice. He could decide to step out of the House tonight and come back tomorrow to amend the Bill and get it right. What is to stop him doing that? The fact that this legislation is being put in place from now until June 2021 is absolutely wrong. We are not going to bring the people with us. There have been seven deaths from Covid-19 tonight. That is very sad and all of those families have my sympathy. There have been 777 cases today, which represents a considerable drop in the numbers. Some 34% of those people are over 45 years of age. Yesterday, the Minister of State at the Department of Health, Deputy Butler, came before the House to tell us once again about the mistakes that are being made in nursing homes. We have not learned the lessons of the previous wave. However, we are punishing the people of this nation because of the failures of the Government and the health service it runs. I find that incredible.

Senator Ivana Bacik: I welcome the Minister of State back to the House. It was good to have him as a colleague in the Seanad previously.

Senator Timmy Dooley: A great colleague at that.

Senator Ivana Bacik: Indeed. I speak for the Labour Party, but our health spokesperson, Senator Hoey, has already very eloquently expressed our serious concerns with the rushed process by which this Bill is being railroaded through this House. There will be much less than one hour for Committee and Remaining Stages, which is really inadequate time to give these serious and draconian provisions adequate and due scrutiny. There are some 45 amendments. Second Stage has not yet been concluded and the guillotine is to be imposed in one hour. I wish to reiterate what Senator Hoey said, outline our serious reservations about the Bill and express our reasons for supporting the sensible amendments put forward by colleagues seeking greater oversight of the provisions of this legislation. Unfortunately, due to the guillotine, we may not get to speak on the amendments. Very few of them are likely to get any sort of adequate scru-

tiny. That is really unfortunate and to be regretted.

Yesterday, in a debate in this House on extending the sunset clauses in the Covid-19 legislation for a period of seven months, I began by expressing my sympathy in respect of all of those who have been bereaved due to Covid-19, the more than 1,800 people who have died, their families and those who have suffered the ill effects of the virus. We are hearing more and more about the awful long-term effects of Covid-19. In the past 24 hours we have heard the very tragic news of outbreaks in various nursing homes. I wish to express my solidarity and that of the Labour Party with all of those working on the front line, particularly in the health service. We will support and have supported the efforts of the Government and of everyone else to flatten the curve, curb community transmission rates and work together for the next six weeks to get to a point where we can exit these very severe restrictions.

While we are being constructive, however, we need to hear a much more coherent medium-term strategy from the Government, particularly in the context of exiting lockdown. We must know the criteria for exiting level 5 in six weeks. What strategies will the Government deploy to ensure that we will not be back under level 5 restrictions in the new year? How will we avoid successive rolling lockdowns, with their hideous effects on so many families, communities, businesses and workers throughout Ireland? It is simply not sustainable to go straight from level 2 or level 3 to level 5. It is not what was envisaged in the framework for living with Covid-19, a plan that we supported because we saw it as a pragmatic approach. In order to live with Covid-19, as it seems we must, we must have a strategy beyond the six-week level 5 lockdown. We need huge investment in contact tracing staff. I have heard the Minister of State's colleagues talk of going from the current complement of 400 up to 750 or 800. Will that be enough to have the capacity to monitor outbreaks and identify and isolate close contacts to prevent the spread we very sadly saw in September and throughout the last month? That spread was seen after our gargantuan efforts succeeded in flattening the curve during the summer. We need reassurance on that point.

We also need investment in rapid testing. There is no sense of investment in that. That is the only way to ensure buy-in from the public and from all of us regarding the necessary public health measures. I have serious difficulties with the proposal to use the blunt instrument of the criminal law to enforce compliance. I have said before in this House and elsewhere that our best weapons in the fight against Covid-19 are goodwill, social solidarity and support across our communities. Introducing draconian legislation for a seven-month period, including provision for on-the-spot fines, is not an appropriate means of response. Why are we introducing on-the-spot fines when the District Court has not been overwhelmed by prosecutions for minor breaches of the penal provisions for which the law already provides? I have real concerns about that. Reading SI 448 of 2020, the new statutory instrument signed by the Minister for Health at 11.50 p.m. last night, I have real concerns about the breadth and scope of the penal provisions already in place, provisions which will be furthered by this legislation.

We welcomed section 5 of that statutory instrument, which provides for paired households, the social bubbles that our Labour colleague, Senator Moynihan, has taken a lead in advocating. That is very welcome. We do not see any Government commitment to extend protections for workers, tenants and families for anything like the extended lifetime of the emergency legislation. There has been no seven-month extension of the eviction ban and there has been no commitment to introducing the statutory sick pay that we in the Labour Party have been pushing for some time.

I have outlined our reservations about the legislation. I also have a question. As this Bill amends the Health Act 1947, I would like the Minister of State to confirm that section 5(5) of that Act will apply to any new regulations made subsequently to the passage of this Bill so that such regulations can be annulled by resolution of either House within 21 sitting days. Deputy Feighan's colleague, the Minister of State, Deputy Butler, stated that the measures could be repealed or shortened by ministerial order.

It would be good to hear a suggestion or confirmation of an exit strategy from the Government.

When will we see an end to these draconian measures and penal provisions regarding travelling more than 5 km from one's home, visiting people and house parties? There are better ways to achieve public compliance and to ensure that we all continue to work together to flatten the curve. We would have infinitely preferred a far less rushed process for debating this very important and substantial legislation.

Senator Micheál Carrigy: My contribution will be very short. I welcome the Minister of State, Deputy Feighan, to the House. I wish him well and congratulate him on his new position. I fully support this Bill, which is needed to underpin the level 5 restrictions which have been put in place. The reality is that there was very limited adherence to the guidelines that were previously proposed. That is why are we back at level 5. We need stronger measures to support our doctors, nurses, teachers and all those who work, and have worked over recent months, on the front line to deal with Covid.

The reality is that businesses will struggle to reopen and their owners will struggle to save their livelihoods. We have seen people flout the rules because there have been no implications for doing so over recent months. House parties have been held, shebeens have been set up and so on. We need these new regulations to save businesses and, more importantly, to save lives, which is what it is all about.

Minister of State at the Department of Health (Deputy Frankie Feighan): I thank all of the Senators for their contributions. There was considerable discussion and the House has heard many views. It is a very difficult and dangerous time. I hope that we can come to a resolution.

Senator Byrne talked about issues affecting the retail sector such as it not being possible to buy socks in a shop while socks are on sale in large supermarkets. I have heard many retailers and businesses expressing their concern at the unfairness of this. The situation to which the Senator was referring is evolving. Some businesses are now beginning to stock personal protection equipment or otherwise setting out to deliberately flout the law. The latest regulations specify that only the part of the retail outlet selling the essential goods may open. The same goes for essential services. I hope that will clarify-----

Senator Malcolm Byrne: That is not happening in reality.

Deputy Frankie Feighan: The regulation needs to be implemented. I accept that is an issue. Senator McDowell has very strong views and an understanding of the law. I appreciate his views. He has said that the Bill was badly drafted and that he has great difficulties with it. I have to take that on board. He talked about questions as to who was the householder and whether a son would not be deemed to be an occupier and so on. He rightly articulated these issues. The provisions do not cover all circumstances but aim to simplify prosecution. They have

their limitations. We understand that this is emergency legislation and that it has its limitations. It introduces additional powers for An Garda Síochána under section 31A and is a step forward. I take on board the issues the Senator has raised regarding the occupier. The Senator also feels the Bill is seriously defective and not workable.

Senator Conway talked about the fines and the challenges of level 5. People are seriously ill and people will die. I appreciate the Senator's views. Senator Ward has said this Bill is unfortunate but necessary, if I interpret him correctly. He would prefer a consent model and to see the carrot and stick used. He was talking about rushing through all Stages of legislation but these are very difficult times. It is an issue which the Senator has discussed. He also talked about the difficulty in amending the Bill because the guillotine is to be used at 8 p.m.

Senator McCallion has said that Sinn Féin wants to save lives and spoke about the level of co-operation with the Government. She feels that while there had been good co-operation, the Opposition is no longer being briefed enough. I will bring that message back to my colleagues. All the parties are briefed but we will take on board the issue the Senator has raised. She talked about encouragement by gardaí and about an overly punitive approach, in respect of which she has tabled amendments. She also said that she supports the public health amendments, although she has difficulties with the approach taken.

Senator Hoey also stated that the legislation is flawed. She has been constructive in opposition and I recognise the work the Labour Party has done over the years. She highlighted issues of debate and democracy very articulately.

Senator Higgins also talked about the Bill being rushed through all Stages. She rightly mentioned the gap between Committee and Report Stages. We would sometimes like to see a gap of two or three days between these and not to rush things through but it seems this was not possible in this case. She talked about flaws in the Bill and we will take on board what she said about apartment blocks. I would like to think we will be able to address that.

Senator Dooley talked about people who have a desire to ignore the regulations. They are probably the reason this Bill is being brought in. He talked about people in the Dáil making dog-whistle comments and hoping to bring people out on the streets to defy the implementation of the health regulations. Sometimes it may be more of a foghorn than a dog whistle. This can be very concerning.

Senator Murphy talked about his difficulties with rushing legislation through and how he hoped Stages of this Bill would be taken next week. In light of the situation we face, it was seen to be very important that it be brought through as quickly as possible. He also talked about a carrot-and-stick approach. This works but there are people who want to undermine these measures. They have their own views but the way they express these views leads perfectly on to what Senator McGahon spoke about. He outlined very graphically the situation of the elderly couple at the bus stop. I was talking to ushers at the convention centre today and they said that, at the protest outside the Dáil yesterday, people were spitting on ushers and members of staff, and were taking photographs. All staff members deserve the protection of their employers. We are the Government. It is hard to believe that people feel that they can spit, spread the virus and infect somebody, who may infect somebody else meaning that somebody may die, and that they can get away with it. What is wrong in this country? What is wrong with these people who think they can get away with doing such a thing? That is why this legislation is being brought in. It is a reaction to these senseless, moronic people who think they can control our country.

The middle ground must hold. The Senator is absolutely right; these people wear the national flag and call themselves patriots. It is an insult to the doctors, nurses, teachers and other front-line staff who have put so much, including their lives, at risk to try to save lives. Imperfect as it is, this legislation is trying to protect and save people's lives.

Senator Keogan spoke about the intrusion of An Garda Síochána and the seven deaths from Covid today. I did not see the figures on the 700 cases. I am not sure if the reduction is due to it being a Friday. If there is a reduction it is good to see. Nobody wanted it, but I hope that by bringing the restrictions to level 5 we can reduce the rate for the next two weeks.

Senator Bacik spoke of the Labour Party group and adequate time for the 45 amendments we may not get around to. The Senator referred to flattening the curve and the move straight from level 2 or level 3 to level 5. This is a strange and uncertain time and we had to go to level 5 on the advice of the Chief Medical Officer and NPHET. The Senator spoke of her concern about capacity in the system. The Senator also spoke of criminal law, goodwill and social solidarity and a less worse process, which I can understand.

Senator Carrigy referred to people who have limited adherence to these regulations and he spoke of his support for the doctors, nurses and the front-line staff. The Senator said that house parties and shebeens had to be stopped. We have seen it in every town, village and city that there are people out there, perhaps through social media or they are being mobilised and it is deeply frustrating. There is also a silent majority out there who want to comply with the law, who are doing their utmost, who have been cocooning for the past seven months, who are staying within the 5 km radius, and who actually want to save lives. These are the people the Bill tries to support. This is why the Bill will go through the House. I believe that everyone would agree the health and safety of people in Ireland must take precedence. Ultimately, this is why the Bill is before the House. It is to support the people of Ireland in tackling the spread of the virus and to show we are on the right track to getting back to some semblance of normality as a nation. The Government can bring in Bills and legislation, can support the front-line staff of doctors, nurses, teachers, gardaí and ambulance drivers, but the Government cannot do everything. The Government cannot wash people's hands for them. That is up to the people out there. We are in this situation because people may have become complacent. Perhaps we all got complacent. We are in a situation where our country is in peril and we have to dig deeper and we have to make more sacrifices.

I thank each and every citizen of this country and politicians from all parties and all strata of society in working together to suppress this awful virus. As the Minister for Finance, Deputy Donohoe, has said, there will be bright times ahead. In a year's time we will talk about having beat the virus. We can only beat it together and we can only beat it by working together. There are times, however, when we must bring in legislation when some outliers want to undermine the State. There are times when we must stand firm and united, take on these insidious individuals, and work together to beat the virus.

Question put and agreed to.

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

Senator Malcolm Byrne: Now.

An Leas-Chathaoirleach: Is that agreed? Agreed.

Health (Amendment) Bill 2020: Committee and Remaining Stages

SECTION 1

Question proposed: “That section 1 stand part of the Bill.”

Senator Michael McDowell: Section 1 is the definition section of the Bill. One might expect that care would have been taken to provide proper definitions in section 1, rather than ignore a real problem with the Bill.

I pointed out to the Minister that in the last Seanad we had a Bill that had left Dáil Éireann in a shambles and arrived up in the Seanad. It was called by a certain person a “dog’s dinner” of a Bill. As a result of that it was debated at great length, as the Minister of State will recall, over a long period of time. The reason was, there was a flaw in the Bill at the beginning. I have no doubt that the then Minister, former Deputy Ross, would have pushed it through against the Seanad’s wishes under the Constitution had he got away with it, but he could not because the Bill was flawed. It was a peculiar thing.

Senator Ward has identified the flaw that I have identified here. I want to put it on record that it is for want of a proper definition in section 1 of who an “occupier” is. I also want it on the record that we are being asked to proceed with a Bill that will not work. Gardaí are being given bogus, dud, so-called powers, which will not work for the reason I will outline. On page 6 of the Bill the term “occupier” is defined as meaning “a person who — (i) resides in the dwelling, and (ii) is the owner of the dwelling”. This is one type of person and this includes a tenant of the dwelling because an owner is somebody who has an interest in it.

An occupier is also defined as “a person who resides in the dwelling pursuant to a licence”. I guess this is a licensee: a member of the family, a grandfather, grandchild, son, daughter, husband, wife, cousin, lodger or whoever it may be. This person resides in the dwelling pursuant to a licence. However, then there is a ridiculous provision “except where the owner of the dwelling also resides therein”. The result of this in the text means that where the owner resides in the premises his or her son, daughter, wife, grandfather, grandson, guest, lodger or anybody, is excluded from the term “occupier”. Consider the consequence of that. The owner is not present on some occasion and a house party is going on. The gardaí arrive at the door and ask for the occupier’s name and address but he or she is not there. To whom do they give a direction to vacate the premises and tell everyone to go home who has not an entitlement to be there? That direction is to be given to the “occupier”.

The occupier, however, is not there. Under this section the gardaí have no power at all to direct the son, daughter or whoever to direct everyone to leave because the section is drafted to define “occupier” as meaning either the owner who resides in the premises, or somebody else who resides in the premises provided that the owner does not reside in the premises. This is like driving a car straight at a wall. It is insane to proceed with this Bill without a proper definition of “occupier”. It defies belief that Dáil Éireann was convened this morning to rush this Bill through. The Bill has come here now, and a very serious flaw that drives the legislative car into the wall cannot be addressed because everybody in the convention centre has gone home for the next fortnight, or whatever it is. We are being told that we must pass this Bill in the next 50 minutes knowing that it has a massive hole in it and that the purported powers we are giving to members of An Garda Síochána will not work. They are a dud. They are a joke. They are a fraud as a power. If a grandmother owns the house and is not there and her son has 30 people in

the house, he is not the occupier and cannot be told anything. The most ridiculous thing is that the poor owner of the house is presumed to be the occupier in any prosecution, which is even more ridiculous. The thing just does not stand up.

I appeal to the Minister of State, for whom I have great admiration because he is a reasonable man and has not been hoity-toity about this mistake in the legislation, to run up the white flag and to apologise because there is a problem here. The simple thing he could do is take an amendment now from the floor of the House. Perhaps Senator Ward's amendment would suffice to deal with this issue because he agrees with me that this is a significant problem with this Bill. The Minister of State should tell Dáil Éireann that it got it wrong this morning, that it sent us a dud and that we are not proceeding with it. Alternatively, he could tell the Dáil that we are proceeding with it by amending it to make sure it works and it does what it says on the tin. Instead of that, we get this autopilot business. The Minister of State has happily half-distanced himself from the use of the guillotine, as have other Ministers today. The number of apologies that have been made to the House today is phenomenal.

It is not the end of the world if Dáil Éireann has to be reconvened on Monday or Tuesday to deal with this Bill with an amendment from us. What is the end of the world is to deliberately pass a Bill we know is a dud. All that is required is the insertion of a proper definition in section 1, the definitions section, that is carefully drafted and would actually work. Instead, we have the diametric opposite. We have provisions that gardaí can give directions to the occupier of a house to send everybody home, but the occupier could be anywhere else but in the house and not present to receive this. Gardaí can demand of them the name and address of the occupier but, of course, the occupier is not a member of the family because the owner of the house resides in it.

There are other people with amendments but I plead with the Minister of State. It is grotesque to go on with a Bill when he knows there is a big hole in it, and to say his instructions from the Chief Whip are to bash on with this by driving the car into the wall and going to the panel beaters later. To say "I don't care, that's the way it is" is not the way to treat the Oireachtas in its entirety and it is certainly not the way to deal with a House that wanted to debate this. There is a whole stack of amendments down. Members are being told that they cannot amend anything and that the Government knows best. The Government wants to pass the Bill as it is, with this massive hole in it making it more or less useless. It is pretending to the public that when a Garda knocks on the door, he has a right to direct people to go home when he does not because the owner of the house is not present. That is ridiculous so I am opposing the section.

Senator Barry Ward: I regret to say that I agree with Senator McDowell. Amendment No. 20, in my name, has been mentioned. I emailed my amendments to the Bills Office on Wednesday night because they had to be in before midday yesterday. This means it was possible for the Minister to bring this amendment before the Dáil. I do not understand why the definition is not in section 1. I do not understand why the definition in section 3 is so convoluted and complicated given that there is a perfectly functional, much simpler and tried-and-tested definition that has not been challenged in the courts in section 151(5) of the Broadcasting Act 2009. That section deals with offences under section 148, which essentially involves television licence offences, and defines an occupier as being "a person who as owner, tenant or otherwise is in occupation, whether solely, jointly or severally, of the premises." It does exactly what it says on the tin, is what we all understand an occupier to be and avoids all of the issues discussed by Senator McDowell. I will not labour it beyond that but one of the things that is pervasive throughout this legislation is that it seeks to be more verbose, complex and wordy than it ever

needed to be to get the job done.

Senator Martin Conway: I formally second Senator Ward's amendments. It is clear-cut. I was in the House with Senator McDowell when the dogs dinner came in and found myself in the very unenviable position of representing the Government but not agreeing with the Bill. It was extraordinary. Thankfully, the Bill did not see the light of day, which was because of the commitment of Senator McDowell, the father of the House and a couple of other Members, who were doggedly determined that the dogs dinner would never see the kitchen table.

Senator Alice-Mary Higgins: We are under some time pressure.

Senator Martin Conway: The Senator might bear that in mind with her own contributions as well. I would point out to the House that it is not the end of the world if Dáil Éireann has to be reconvened - I very much agree with that sentiment - but I would like to hear from the Minister of State at this stage. If he wishes to consult his officials to get their perspective on it, he can do so. Senator Ward has identified a clear definition that has been tried and tested for a long time in dealing with television licences, which are very much a household issue. Obviously, there have been thousands of incidences where the definition could have been challenged but was not. We are better off getting the legislation right. Regarding the principles we are trying to espouse, most people, and I say "most" in inverted commas, are on the same page but we need to get the page right. I would like to hear what the Minister of State in consultation with his advisers has to say on the specifics of it.

Senator Malcolm Byrne: I am happy to state that I am in support of the amendment and proposal from Senator Ward. Senator McDowell is correct. We all know the import of this Bill and what it is trying to achieve, but there is no point in sending gardaí out with a ham-fisted piece of legislation. Senator Ward's proposal is a perfectly reasonable one that will give the necessary powers. As Senator Conway said, the Minister of State could consult his officials. I do not think there should be a problem in terms of the Dáil coming back to address this. That is far better in terms of us getting this right rather than something embarrassing being let out of this House. The issue has been identified and I certainly support Senator Ward's proposal.

An Leas-Chathaoirleach: Did Senator McCallion indicate?

Senator Elisha McCallion: I would rather go through to the other amendments.

An Leas-Chathaoirleach: That is okay. I will bring in the Minister of State before we dispose of the section.

Minister of State at the Department of Health (Deputy Frankie Feighan): I appreciate where Senators are coming from regarding the amendments. I really do not think I can accept amendments because we would have to recall the Dáil and I do not think we can do that at present.

Senator Malcolm Byrne: Is it possible to propose an adjournment for two minutes to allow the Minister of State to-----

An Leas-Chathaoirleach: The Minister of State has indicated he is not accepting the amendment. It is the Minister of State's prerogative to accept or not accept the amendment.

Senator Sharon Keogan: The Dáil is still sitting.

An Leas-Chathaoirleach: The Minister of State has indicated he wants to go ahead.

Question put and declared carried.

Question, “That section 2 stand part of the Bill”, put declared carried.

SECTION 3

An Leas-Chathaoirleach: Amendments Nos. 1 and 2 are related and may be discussed together by agreement. Is that agreed? Agreed.

Senator Barry Ward: I move amendment No. 1:

In page 4, line 27, to delete “or” and substitute “and”.

Both of these amendments are related to the same issue. Section 3 amends section 31 of the Health Act 1947 by inserting a new subsection 6C, which provides for a power for the Minister to make regulations relating to penal provisions, which is what we have been speaking about. It then prescribes a number of matters the Minister should take into account when applying or drafting those regulations or regulations relating to a fixed payment notice. The proposed subsection 6C(b)(iii)(I) states the Minister must consider the utility of providing for such additional means of enforcement of penal provisions as part of the effort on the part of the State to maintain and enable the graduated restoration of normal functioning of society or to avoid the imposition of restriction or further restrictions on society. It seems clear that what is intended is that the Minister will consider both of these. The Minister will consider maintaining the graduated restoration of normal functioning of society and avoiding the imposition of restrictions or further restrictions. The word that is used is “or”. Therefore, it is disjunctive and creates an either-or situation.

The same is true in the following paragraph, which states the Minister may make regulations prescribing for the form of a fixed payment notice or the process to be followed by a member of An Garda Síochána when giving a person a fixed payment notice. It should be “and”. It should be a conjunctive clause. Presumably, if the Minister makes regulations prescribing the form of a fixed penalty notice, he or she must also make regulations for the process. If it is either-or then the Minister cannot make regulations, by my reading, for the process to be followed by a member of An Garda Síochána. In these two subparagraphs it should be “and” instead of “or”. We should be conjoining these two considerations and not separating them.

Senator Alice-Mary Higgins: I want to speak in support of the amendments. They are incredibly sensible. The use of “or” or “and” can make a huge difference. In this case, to speak to amendment No. 2 first, it is absolutely clear the Minister should not be making a fixed payment notice without prescribing how it would be used and there is no point in prescribing how it might be administered if it does not exist. It does not function as a section unless that change is made in respect of “and”.

With regard to amendment No. 1, both of the measures on maintaining and enabling the graduated restoration of society and avoiding the imposition of further restrictions are important, but I want to add a qualitative comment on this. It is a very important provision because it provides that the penalties should only be introduced where the Minister has really looked to see whether there are other measures or penal provisions that could be used appropriately. This is why it is appropriate there would be two checks. It is significant.

I am not averse to there being penalties. I am someone who wished we had pushed further towards zero Covid at the time. I support level 5. I support restrictions and taking measures. I believe this is a pandemic and requires seriousness but it has to be done properly. There is legislation on public order offences. We have heard comments about the fascist rallies and other related rallies that have been taking place. It has been baffling to me, I must say, in some of these cases, with regard to threats and harassment, because the Garda has powers to address situation of threats and harassment. It also has powers to give direction where it has a reasonable apprehension for the safety of persons. These are powers the Garda already has in law under public order legislation. These powers have not been used in situations, which have been extraordinary, where we have people menacing individual members of the public. This is my point. It is with regard to how the powers and policies that already exist are used. The safeguard of having double checks is important in respect of the issue, not just because I believe it is a drafting error but because it would be appropriate that there are very careful checks on whether there are powers we can already use before new penalties are created.

Senator Malcolm Byrne: I realise the difficulty the Minister of State is in and I have proposed adjourning for a couple of minutes to allow him to have appropriate discussions on this. I appreciate the pressure the Minister of State is under but there is no point in the House passing dog's dinner legislation, to use the phrase being used all day. I am in support of the proposals of Senator Ward.

Senator Sharon Keogan: I second that proposal.

Senator Malcolm Byrne: I propose that we adjourn for three minutes.

An Leas-Chathaoirleach: With respect, I am sorry but such a proposal would have to come from the Leader or Deputy Leader as per Standing Orders.

Senator Martin Conway: He is the Acting Leader.

An Leas-Chathaoirleach: We have the Deputy Leader here so it is a question for Senator Chambers to make the call.

Senator Lisa Chambers: I propose a three-minute adjournment.

An Leas-Chathaoirleach: Is that agreed? Agreed.

Sitting suspended at 7.37 p.m. and resumed at 7.40 p.m.

Senator Regina Doherty: I propose, with the agreement of the House, that we suspend the sitting until 8 p.m.

Senator Michael McDowell: Is it not the case that, according to the Order of Business, the question is to be put at 8 p.m.?

An Cathaoirleach: The question is to be put at 8.15 p.m. We will be back before then.

Sitting suspended at 7.53 p.m. and resumed at 8.03 p.m.

Amendment, by leave, withdrawn. Amendment No. 2 not moved.

An Cathaoirleach: Amendments Nos. 3 and 5 are related and may be discussed together, by agreement. Is that agreed? Agreed.

Senator Elisha McCallion: I move amendment No. 3:

In page 4, between lines 36 and 37, to insert the following:

“(e) The Minister shall, before prescribing a fixed penalty provision in regulations under this section, recognising the emergency nature of these regulations, consult with and seek approval of a majority of the members of both Houses of the Oireachtas.”.

This is getting ridiculous. There have been two occasions in one day where, because of the way legislation is being shoehorned not just through this House but both Houses over the past few weeks, we have identified major problems in a Bill. We are expected to give our trust to the Minister to deal with these matters. These amendments seek that any further regulations would come back before these Houses, which is absolutely essential, given the calamity we have already seen today, with a former Attorney General saying the legislation is as useless as an ashtray on a motorbike. Earlier, the Data Protection Commission indicated the legislation relating to the mother and baby homes had similar issues. These Bills will affect millions of our citizens and we are expected to entrust the Minister with further regulations, given what we already know are significant holes in the legislation.

The proposals we have made in these amendments would mean further regulations would have to come back before these Houses. It is imperative we allow that to happen. I implore the Minister of State to give serious consideration to this and the other House to be allowed to oversee future regulations arising from this and other legislation.

Given what we have just seen, we must be mindful of our staff in the Oireachtas as well. The staff in the Bills Office who are involved in this process of producing legislation are under huge pressure. Independent Senators have correctly said they do not have the support of parties and they are trying to get through all this legislation. We have clearly identified a major problem in the way we are trying to legislate with this. If we do not agree the two amendments, which would allow us the space to properly scrutinise regulations arising from this legislation, it will bring shame on all of us. I ask people to give this serious consideration. This has gone beyond a joke.

Senator Ivana Bacik: The Labour Senators support these amendments, which seem sensible to us to ensure a level of parliamentary scrutiny that is sadly lacking due to the rushed nature of this debate, as we have seen with the somewhat farcical proceedings we witnessed, as Government Senators point out flaws in this Bill. It would be amusing if it were not so serious given the powers prescribed in the legislation are draconian. We all accept the idea that we are in times demanding such draconian measures. Nonetheless, we need time for adequate parliamentary scrutiny. The proceedings tonight demonstrate just how important the amendments are. In particular, when we are considering the introduction of fixed penalty provisions, another layer of parliamentary scrutiny should be included.

Senator Alice-Mary Higgins: There has never been a more apt moment to call for a mechanism involving appropriate scrutiny. It is as clear as day how important it is that there be scrutiny and value in that scrutiny offered by all Members. I strongly support these amendments. The flaws in this Bill would have been identified and dealt with if we had proper Committee and Report Stages. If there are mistakes in the regulations made by the Minister, we should not see them acted out against persons but rather ensure they can be scrutinised. I support these

amendments and ask the Minister to bring his regulations for scrutiny to the House.

The other element of scrutiny is, of course, a review. Let us please not be asked to renew these regulations or legislation without a review of how they have operated or how the flaws we have heard about could be addressed. It is another crucial element because there are very simple elements of renewal set out here that are of concern.

Senator Michael McDowell: Section 6D, which is to be inserted into the 1947 Act by this section of the proposed Bill, allows the Minister to make regulations “prescribing such one or more penal provisions as are specified in the regulations to be dwelling event provisions.”. The proposed section 6E states, “In proceedings for an offence under this section consisting of a contravention of a dwelling event provision, it shall be presumed, unless the contrary is proved, that the occupier of the dwelling in respect of which the offence is alleged to have been committed was the event organiser.”. I have made my point about an occupier and I will not repeat it but the effect of these sections is to allow the Minister, by regulation, to reverse the onus of proof in criminal proceedings as a matter of choice. That is an impermissible delegation of legislative power. As the Minister has designated the offence as such in a statutory instrument that has never been looked at by these Houses, the onus of proof would be reversed against people. There is a big constitutional issue there and I am not the only person who has said that. My colleague from the Bar, Deputy McNamara, has voiced this view as well. Just because this is emergency legislation the Constitution does not fly out the window.

Deputy Frankie Feighan: I thank Senators for their views and their amendment but I must oppose it. As a Member of the Oireachtas, I understand the motivation behind this amendment. However, we are living in exceptionally challenging and unprecedented times. As I said in my earlier speech, the Government is battling Covid on a number of fronts, including enforcement. The ability of the Government to make regulations reflecting its decisions on public health measures is vital if we are to succeed. Right now, we are at level 5 of the Government’s framework and it is vital that people comply with guidance and advice. To ensure that, we need adequate enforcement. If I were to accept this amendment, there would be a significant lag in bringing enforcement powers to bear on public health guidance and advice. In that context, it is important to recognise that the driving force behind the Bill is not to penalise. In fact, the sanctions we are discussing are less grave than those currently available to the Garda. The aim of the Bill is to enhance compliance with public health measures. The Bill already provides that the Minister for Health must consult with the Minister for Justice and Equality and any proposals for regulations with fixed penalty provisions would be brought to the Government for consideration. In addition, section 5 of the Health Act 1947 states, “Every regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next subsequent twenty-one days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly ...”. I reiterate that, as a Government, we are focusing on educating, encouraging and engaging with people. As I have said on numerous occasions, enforcement is the last resort. I reject these amendments.

Senator Elisha McCallion: I do not accept what the Minister of State is saying. I am not even sure he believes what he is saying, if he were honest with himself.

An Cathaoirleach: Is the amendment being pressed?

Senator Elisha McCallion: Yes.

Amendment put:

The Committee divided: Tá, 13; Níl, 21.	
Tá	Níl
Bacik, Ivana.	Byrne, Malcolm.
Black, Frances.	Carrigy, Micheál.
Boylan, Lynn.	Casey, Pat.
Gavan, Paul.	Cassells, Shane.
Higgins, Alice-Mary.	Chambers, Lisa.
Hoey, Annie.	Conway, Martin.
Keogan, Sharon.	Crowe, Ollie.
McCallion, Elisha.	Doherty, Regina.
McDowell, Michael.	Dolan, Aisling.
Moynihan, Rebecca.	Dooley, Timmy.
Sherlock, Marie.	Gallagher, Robbie.
Wall, Mark.	Garvey, Róisín.
Warfield, Fintan.	Kyne, Seán.
	McGahon, John.
	McGreehan, Erin.
	Murphy, Eugene.
	O'Loughlin, Fiona.
	O'Reilly, Joe.
	O'Reilly, Pauline.
	Seery Kearney, Mary.
	Ward, Barry.

Tellers: Tá, Senators Annie Hoey and Elisha McCallion; Níl, Senators Robbie Gallagher and Seán Kyne.

Amendment declared lost.

An Cathaoirleach: The time permitted for this debate having expired, I am required to put the following question, in accordance with an order of the Seanad of 22 October 2020: “That section 3 is agreed to in Committee; in respect of each of the sections undisposed of, the section is hereby agreed to in Committee; the Preamble and Title are hereby agreed to in Committee; the Bill is accordingly reported to the House without amendment; Fourth Stage is hereby completed; and the Bill is hereby received for final consideration and passed.”

Question put:

The Seanad divided: Tá, 21; Níl, 7.	
Tá	Níl
Byrne, Malcolm.	Black, Frances.
Carrigy, Micheál.	Boylan, Lynn.
Casey, Pat.	Gavan, Paul.
Cassells, Shane.	Keogan, Sharon.

Chambers, Lisa.	McCallion, Elisha.
Conway, Martin.	McDowell, Michael.
Crowe, Ollie.	Warfield, Fintan.
Doherty, Regina.	
Dolan, Aisling.	
Dooley, Timmy.	
Gallagher, Robbie.	
Garvey, Róisín.	
Kyne, Seán.	
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 Michael McDowell and Sharon Keogan.

Question declared carried.

Health (Amendment) Bill 2020: Motion for Earlier Signature

Senator Regina Doherty: I move:

That pursuant to subsection 2° of section 2 of Article 25 of the Constitution, Seanad Éireann concurs with the Government in a request to the President to sign the Health (Amendment) Bill 2020 on a date which is earlier than the fifth day after the date on which the Bill shall have been presented to him.

Question put and declared carried.

Gnó an tSeanaid - Business of Seanad

Senator Regina Doherty: I move:

That, notwithstanding anything in the order of the House of 22 October or in Standing Orders, No. 6a on the third Supplementary Order Paper be taken now.

Question put and agreed to.

Sitting Arrangements: Motion

Senator Regina Doherty: I move:

That, notwithstanding anything in the Standing Orders relative to Public Business:

(1) On its rising today, the Seanad shall adjourn until 10.30 a.m. on Thursday, 5th November, 2020, and the following arrangements shall apply:

(a) Commencement matters shall be taken in accordance with Standing Order 29;

(b) Standing Order 30 shall stand suspended;

(c) There shall be no Order of Business;

(d) Matters on the Business of the Seanad shall be taken in accordance with Standing Order 16 (3) at 12 noon;

(e) The business to be taken shall be confined to the items set out in the Schedule to this paragraph and, accordingly, no other business shall be taken unless the Seanad shall otherwise order on motion made by the Leader of the House or such other Senator as she may authorise in that behalf.

Schedule

Suspension of Sitting.

On the conclusion of Matters on the Business of the Seanad, the sitting shall be suspended until 1.30 p.m;

Criminal Justice (Theft and Fraud Offences) (Amendment) Bill 2020 – Order for Second Stage and Second Stage.

The Order for Second Stage and Second Stage of the Criminal Justice (Theft and Fraud Offences) (Amendment) Bill 2020 shall be taken at 1.30 p.m. and shall, if not previously concluded, be brought to a conclusion at 3 p.m. The contribution of Group Spokespersons at the debate on Second Stage shall not exceed 8 minutes and all other Senators shall not exceed 5 minutes, and the Minister shall be given no less than 8 minutes to reply to the debate; and any divisions demanded thereon shall be postponed until immediately after the Order of Business on Friday, 6th, November, 2020.

Suspension of Sitting.

On the conclusion of proceedings of the Criminal Justice (Theft and Fraud Offences) (Amendment) Bill 2020, the sitting shall be suspended until 3.15 p.m;

Private Members' Business: Motion regarding Biodiversity (Green Party).

Subject to notice of motion and the acceptance of such motion by the Cathaoirleach, the proceedings on a Motion regarding Biodiversity shall commence at 3.15 p.m. and shall, if not previously concluded, be brought to a conclusion after two hours and any division demanded thereon shall be postponed until immediately after the Order of Business on Friday 6th November, 2020.

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(2) The Seanad on its rising on Thursday 5th November, 2020, shall adjourn until 9.30 a.m. on Friday, 6th November 2020 in the Dáil Chamber.”

Question put and declared carried.

An Cathaoirleach: In accordance with the order of today the Seanad now stands adjourned until 10 a.m on Thursday, 5 November 2020.

The Seanad adjourned at 8.45 p.m. until 10.30 a.m. on Thursday, 5 November 2020.