

DÁIL ÉIREANN

AN ROGHCHOISTE UM LEANAÍ AGUS GNÓTHAÍ ÓIGE

SELECT COMMITTEE ON CHILDREN AND YOUTH AFFAIRS

Dé Céadaoin, 23 Deireadh Fómhair 2019

Wednesday, 23 October 2019

The Select Committee met at 9.30 a.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies

Lisa Chambers,	
Kathleen Funchion,	
Denise Mitchell,	
Tom Neville,	
Anne Rabbitte,	
Sean Sherlock,	
Katherine Zappone (Minister for Children and Youth Affairs).	

Teachta / Deputy Alan Farrell sa Chathaoir / in the Chair.

Child Care (Amendment) Bill 2019: Committee Stage

Chairman: I welcome members and also viewers who may be watching proceedings on Oireachtas TV to the public session of the Oireachtas Select Committee on Children and Youth Affairs.

The Dáil referred the Child Care (Amendment) Bill 2019 to the select committee on 19 September and the committee will today consider the legislation. Members are reminded of a long-standing parliamentary practice to the effect that Members should not comment on, criticise or make charges against a person outside the House, or any official by name in such a way as to make him or her identifiable.

I remind members to turn off their mobile phones or switch them to flight mode as they may interfere with the sound system and make it difficult for parliamentary reporters to report the meeting. They can also adversely affect television coverage and web-streaming.

On behalf of the committee I welcome the Minister for Children and Youth Affairs, Deputy Zappone, and her officials.

At present guardian *ad litem* arrangements for children who are subject of public law child-care proceedings are provided for under section 26 of the Child Care Act 1991. The primary purpose of the Child Care (Amendment) Bill 2019 is to give legislative effect to replacing section 26 with a new part of the 1991 Act to regulate the current *ad hoc* system of guardian *ad litem* appointments for the benefit of children and young people.

The intention is for the select committee to conclude its consideration of the Committee Stage of the Bill during this morning's meeting. The meeting room is available until 2 o'clock. I hope we will not need it for that long. Is that agreed? Agreed.

I refer members to a grouping of amendments for the purpose of debate. Unfortunately a number of amendments submitted by Deputies Funchion, Rabbitte and Sherlock have been ruled out of order and the Bills Office has advised them accordingly. Does the Minister wish to make an opening statement?

Minister for Children and Youth Affairs (Deputy Katherine Zappone): No.

Deputy Sean Sherlock: I seek advice on the issue. Amendments in my name and those of Deputies Rabbitte and Funchion have been ruled out of order. They were tabled in good faith. To my mind we have not received a comprehensive justification as to why they have been ruled out of order. I seek permission to hear from the Minister as to that justification.

Chairman: It is not-----

Deputy Sean Sherlock: I understand from the Minister's Second Stage speech that the Bill contains a presumption in favour of the appointment of a guardian *ad litem*. If so, I do not see how from a resource point of view of putting a charge on the Exchequer our amendments run contrary to that. What we are seeking to do through our amendments is buttress the existing system.

Chairman: I understand. Point made.

Deputy Kathleen Funchion: I wish to make a similar point. I was disappointed, and near-

ly angry, to see these amendments ruled out of order. The Bill is about the rights and interests of a child, which is why the guardian *ad litem*, GAL, system was put in place in the first instance. This is particularly the case at the moment, where social workers change regularly and many children do not have social workers for long periods. In many cases, the guardian *ad litem* is basically the child's right-hand person. If we are saying that we will not allow for guardians *ad litem* in all circumstances, the Bill is hypocritical.

I have a major issue with the fact that it was 6.30 p.m. yesterday when we were told that the amendments had been ruled out of order. That is very short notice to allow us to prepare for today. The ruling undermines the Bill. I appeal to the Minister to provide for a discussion on the matter so that we might find a way of getting around it. Amendment No. 2 in particular is important, but it has been ruled out of order. I would like to see us doing something about the matter it addresses and amending the Bill on Report Stage. Otherwise, we in my party will be reserving the right to vote against the Bill on Report Stage. It is contradictory and hypocritical and does not protect the best interests of children.

Deputy Anne Rabbitte: I will echo what my colleagues have said. It is unusual for three Opposition Deputies to work together and submit amendments. We obviously felt strongly on this issue, given that we submitted three joint amendments. We did so because we believed we would be facilitating, supporting and strengthening the Bill. Ruling them out of order will leave the Bill weak, and the people who will be most affected are the children in the childcare system. I ask that the Minister consider what we have submitted. Deputy Funchion cited one amendment in particular, but what we speak about in our amendments goes to the core of the issue, namely, ensuring that every child has access to a GAL regardless of postcode lotteries or the level of the court system he or she is in. The child might not need a guardian *ad litem*, but he or she would have had the opportunity to decline one. Another amendment would have protected the guardian *ad litem* by providing him or her access to legal advice.

That is where we were coming from with our amendments. We believed we were assisting and facilitating the process in a mature fashion, but we were told at 6.30 p.m. yesterday without being given any good reason that they were not being accepted. I look forward to the response.

Deputy Sean Sherlock: I beg the Chairman's indulgence before the Minister replies. The other issue I have is the constitutionality of the legislation under Article 42A.4.1o, which reads:

- (i) brought by the State, as guardian of the common good, for the purpose of preventing the safety and welfare of any child from being prejudicially affected, or
 - (ii) concerning the adoption, guardianship or custody of, or access to, any child,
- the best interests of the child shall be the paramount consideration.

I know that the Minister is acting in good faith in respect of this provision, but our fear is that the postcode lottery will be an issue. For instance, it is not always the case that a guardian *ad litem* may be appointed. It depends on the judge and where he or she sits. It is at the judge's discretion. This is an issue that has been-----

Chairman: I must interrupt.

Deputy Sean Sherlock: It is important.

Chairman: The Deputy is going over ground that-----

Deputy Sean Sherlock: This issue has been highlighted by the Child Care Law Reporting Project. In some areas of the country, guardians are only appointed in a small number of cases. The justification for our amendments has to do with the prediction that the current iteration of the Bill will have no significant impact on that phenomenon. That is our worry. I wish to declare at this stage that, if we do not resolve the issue today, I will seek to have it addressed on Report Stage. I want to put down that marker.

Chairman: Duly noted.

Deputy Anne Rabbitte: I am the same.

Chairman: That is fine. Members will have noted my comments in the Dáil on Second Stage and will be aware of where I stand on the matter. The Bills Office advised that the amendments in question were out of order because they placed a charge on the Exchequer. The Deputies were notified of that and letters were issued to them last night.

Deputy Anne Rabbitte: That is not quite-----

Deputy Kathleen Funchion: Actually, the letter was issued to me and I was asked to pass it on.

Chairman: No. That was only in respect of one amendment. The decisions on the other amendments were notified to the individual members. I oversaw that myself, so I know everyone received notification.

Having made my comments on Second Stage, the committee's members will be aware of my position. To clarify, it is not a matter for the Minister to determine whether an amendment is in order.

Deputy Sean Sherlock: I am seeking for the Minister to speak to the issue, but I am also-----

Chairman: I intend to invite her to do so, but I cannot go back over a decision that has been made on admissibility. The Deputies will have to take it up with the Ceann Comhairle.

Deputy Sean Sherlock: Actually, the Ceann Comhairle has not ruled on this. As I understand the matter, it is the Bills Office-----

Chairman: Yes.

Deputy Sean Sherlock: -----and the Chairman who have ruled on it-----

Chairman: On advice.

Deputy Sean Sherlock: -----based on advice. I wish to see the advice or have regard to it.

Chairman: The Deputy would have to take that up with the Ceann Comhairle's office. I am not in a position to provide him with it.

Deputy Sean Sherlock: May I ask a question?

Chairman: I have the advice with me and will read it to the committee when we reach the amendments. I will not do so now only to do it again later.

Deputy Sean Sherlock: The Chairman is in possession of the advice.

Chairman: Yes.

Deputy Sean Sherlock: He will make it available.

Chairman: Absolutely.

Deputy Sean Sherlock: Could we have a copy of it so that we might read it?

Chairman: It will be a matter of public record very shortly.

Deputy Sean Sherlock: I thank the Chairman.

Chairman: I thank members for raising the matter. Does the Minister want to address it briefly?

Deputy Katherine Zappone: I do not need to make an opening statement.

Chairman: We will be making reference to this matter as we go along.

Deputy Katherine Zappone: To be clear, the Chairman has the Bills Office's rationale for disallowing the amendments.

Chairman: I do.

Deputy Katherine Zappone: One of the key amendments has to do with the mandatory appointment of guardians *ad litem*. The Chairman will share that rationale with the committee.

Chairman: I will.

Deputy Katherine Zappone: I appreciate that the Deputies' amendments were proposed for the reasons they just outlined. I come from that same place. If the committee wishes, and apart from the rationale of the Bills Office, I would be happy to offer some rationale beyond the money issue for disallowing the amendments and why, from my perspective, they are unacceptable.

Chairman: I thank the Minister. I call Deputy Funchion briefly. We are still in the in-between.

Deputy Kathleen Funchion: I will be 30 seconds. Could we examine the issue of the mandatory guardian *ad litem*? Is there a way of arriving at a position that is agreeable to all? Obviously, that would not happen today, but before Report Stage.

Chairman: Here we are. The Minister and the committee can discuss it. This is the correct forum.

Deputy Kathleen Funchion: We laid out our position, but we were told it was being ruled out of order.

Chairman: I appreciate that, but the Minister has the authority to give effect to such suggestions, even if they have been ruled out of order, by resubmitting them at a later Stage in her name.

Deputy Kathleen Funchion: That was what I was trying to find out.

Chairman: That is my intention. The Minister can set out her own rationale for agreeing to

the concept of the amendment without having to take it if it is not correctly put. She can then table it. That debate can take place during the course of this meeting.

Deputy Sean Sherlock: The Minister is sympathetic to the position in which the three Deputies here find themselves.

Chairman: Five Deputies.

Deputy Sean Sherlock: Three, because they are our amendments that have been ruled out of order. We are seeking to legislate with one hand tied behind our backs. It was only at the 11th hour last night that we were told that the-----

Chairman: We have been over this two, three or four times.

Deputy Sean Sherlock: Please, Chairman.

Chairman: In fairness, we are-----

Deputy Sean Sherlock: May I be allowed to make a point?

Chairman: I permitted a short discussion on the matter. We have had it now. This will be Deputy Sherlock's third contribution.

Deputy Sean Sherlock: We are on Committee Stage.

Chairman: I know, but we have not started our deliberations. We can come to it if the Deputy wishes to debate it later. We can bring it in-----

Deputy Sean Sherlock: It is actually pertinent.

Chairman: -----when we are discussing it.

Deputy Sean Sherlock: I am responding to what the Minister just said.

Chairman: There is no provision for the Deputy to respond to the Minister's opening statement. I allowed Deputy Funchion to make a point. I would like Deputy Sherlock to make a point, but he is repeating himself.

Deputy Sean Sherlock: There is no other committee in these Houses that would try to close off debate at this point on Committee Stage.

Chairman: I am not closing off debate.

Deputy Sean Sherlock: In that case, will the Chairman please allow me to make my point?

Chairman: I will allow debate to take place at the appropriate time. This is not it.

Deputy Sean Sherlock: I am not trying to be obstreperous. I merely wish to make a point in respect of the fact that our amendments were ruled out of order. The Minister has declared that she is sympathetic to the views and she has also said, if I understood her correctly, that there are other reasons they have been disallowed. I know that the Minister will get to that.

Chairman: Yes.

Deputy Sean Sherlock: However, it still does not address the fact that our amendments

were ruled out of order at the 11th hour last night-----

Chairman: Amendments are routinely ruled out of order at that point.

Deputy Sean Sherlock: I ask the Chairman to please allow me to finish.

Chairman: Briefly, please.

Deputy Sean Sherlock: Time has been allocated for this debate.

Chairman: Very briefly.

Deputy Sean Sherlock: If the Chairman keeps interrupting me-----

Chairman: If the Deputy is going to be pedantic about it, I will move on.

Deputy Sean Sherlock: I am not being pedantic.

Chairman: The Deputy can raise the issue at the appropriate time. This is not it.

Deputy Sean Sherlock: This is very important-----

Chairman: The Deputy knows that as well as I do. He is the Chairman of a committee. We have had this row before.

Deputy Sean Sherlock: We have not had this row before.

Chairman: He is aware of it. I am aware of it.

Deputy Sean Sherlock: This is not a row. I merely wish to ask why we are being told that our amendments are out of order and that there was advice to that effect but we have not physically received the advice. I have not been able to read the advice which the Chairman said he would make available to us-----

Chairman: The committee members will receive such advice at the routine and appropriate time.

Deputy Sean Sherlock: Quite frankly, we need that advice if we are to determine how to proceed on Committee Stage. I do not think the Chairman understands this.

Chairman: I will repeat myself for the second time and make it clear again. It is routine for such matters to be determined by the Bills Office in conjunction with the Chairman of any committee at this Stage of a Dáil Bill and for the decision to be made the night before. The Deputy is a Chairman and has been a Member of the House for longer than I have, so he knows that. The amendments and the rationale will be outlined to the Deputy when we get to them. That is the normal procedure. The Deputy was advised by email last night, through the secretariat. That is the normal procedure. We will get to it. The Minister has indicated her position. Deputy Funchion raised a very important matter, which I am sure the Minister will discuss with us. I should point out that we are trying to work together on this. I do not have a negative position on the amendment. I said as much in the Dáil Chamber. I am sympathetic to it, as is the Minister. We can have a proper debate about it and hopefully come up with a resolution. That is my position. I must now follow the procedure for Committee Stage. We can get to the individual amendments when they arise. We can discuss them and I am sure the Minister will set out her points. That is the way this works. The Minister is not making an opening statement.

Sections 1 to 5, inclusive, agreed to.

SECTION 6

Chairman: Amendment No. 1 in the name of Deputy Rabbitte has been ruled out of order. As I am sure the members are aware, it would require the District Court to appoint a guardian *ad litem* in all childcare proceedings and would enable the court to discharge that order where the child makes a request to that effect. Appointing a guardian *ad litem* in every case before the District Court would entail a significant increase in the cost to the State. Amendment No. 3 is consequential to amendment No. 1. The amendments must therefore be ruled out of order as they would create a charge on the revenue, in accordance with Standing Order 179(3). That is the advice that has been given. We would not normally have a debate on such matters, but if it is all right with the Minister I might ask for her opinion on it.

Deputy Anne Rabbitte: That is what I was going to ask.

Chairman: There is no obligation to, but the Minister may do so if she wishes.

Deputy Katherine Zappone: I hope to proceed with openness. I thank the Chair for sharing that advice.

I cannot accept the amendment because I do not agree that the appointment of a guardian *ad litem* should be mandatory in every case. That opinion is shared by many stakeholders who have engaged with us, including Dr. Carol Coulter, who as the Deputy knows is the director of the Child Care Law Reporting Project. I have also discussed this with my officials at length. To tease out why that would be the case I will propose some hypothetical situations in which it might not always be necessary to appoint a guardian *ad litem*. One example would be a non-contentious case where a child is already in care, either with relatives or in general foster care, and where this is being formalised by a care order. Another example might be the case of a vulnerable parent, in which voluntary care may not be appropriate. The proceedings may be about formalising care by relatives. That is an example in which it might not be necessary to appoint a guardian *ad litem*. Another example might concern an older child, who might not want yet another professional to be assigned to him or her. An older child may request to speak to the judge directly, perhaps accompanied by his or her social worker. Those are examples where in my opinion it may not be necessary to appoint a guardian *ad litem*. Therefore the Bill should not stipulate that it is mandatory to appoint a guardian *ad litem*. Of course guardians *ad litem* do very valuable work, but in many cases it is important to provide flexibility. We must recognise that they are not the only way for a child to have his or her views and best interests represented in every set of circumstances. I expect the Deputies would agree with that.

The provisions relating to the appointment of a guardian *ad litem* must be read in conjunction with the additional obligations the Bill places on the court through the greatly expanded section 24, with which I know Deputies are familiar. That new section removes the reference to parents' rights and responsibilities and clearly states, "the court shall regard the best interests of the child as the paramount consideration in the resolution of any such proceedings". It includes a long list of factors that the court must consider when determining what is in the best interests of the child. It also inserts a new section 24A, which provides:

... the court, in so far as practicable shall—

(a) determine the means by which to facilitate the expression by the child of his or her views in the proceedings, and

(b) give such views as the child wishes to express due weight, having regard to the age and maturity of the child.

Taken together, these provisions place a heavy duty on the court to hear the views of children who are the subject of care proceedings, to give those views due weight and to fully consider a long list of factors during its consideration of what is in the child's best interests.

The judge in childcare proceedings has an overarching responsibility to vindicate the rights of the child, including his or her fair procedure rights. The authors of *Child Care Proceedings: A Thematic Review of Irish and International Practice*, research commissioned by my Department, outlined other mechanisms used in other jurisdictions to hear the views of the child. Those include a meeting between the child and the judge, the child providing the court with a personal letter, video or drawing, the child responding to a questionnaire and the child communicating his or her views through his or her social worker.

I do not want to constrain the courts if they have a better way of doing something for a particular child. I am also mindful of the planned reform of the family courts and hope that in the future there may be other approaches to hearing a child's view more directly and representing his or her best interests. Amendments including the one proposed by Deputy Rabbitte acknowledge that a guardian *ad litem* is not always needed. The amendment suggests that when a child does not want one to be appointed to him or her, the child's views should be respected. My provision provides that when considering whether to appoint a guardian *ad litem*, the court should consider the views of the child on whether or not he or she should have one. Appointing a guardian *ad litem* to every single child, even children who have already expressed the view that they do not want one, forces a child to reject a guardian *ad litem* once one is appointed. That would be disrespectful to an articulate young person who has already made his or her views known to the court. I feel it would make more sense not to appoint a guardian *ad litem* if a child does not want one in the first instance. That is in the Bill as it stands. I also believe that adding an extra layer to proceedings by requiring a guardian *ad litem* to be appointed and then dismissed, because he or she is not needed, would undo a lot of the good work we are trying to do. We want a new guardian *ad litem* system to reduce complications and delays and not add to them. The Bill is an effort to bring about a recalibration of our statutory landscape in which the child is placed front and centre. I know members agree with that principle, even if they have different views on this particular issue.

Chairman: Members can come in on the section but we cannot debate amendments that have been ruled out of order. Amendment No. 2, which has been ruled out of order, would require the District Court to appoint a guardian *ad litem* in all childcare proceedings and would enable the court to discharge that order where the child makes a request to that effect. Appointing a guardian *ad litem* in every childcare case before the District Court would create a substantial increase in the cost to the State. The amendment must, in accordance with Standing Order 179 (3), be ruled out of order as it would give rise to a charge on the Revenue.

Deputy Anne Rabbitte: Can I have a moment?

Chairman: Briefly. I must follow the rules.

Deputy Anne Rabbitte: I appreciate that. We need to go back to where we started because this is going to keep going around in a circle. We feel passionate about the amendments we put in and we are very hurt that they were thrown out at 6.30 p.m. We are very irate that we did not have the understanding behind it and are only hearing it now. We are also very irate that we do

not have the right to respond. Maybe they are the rules but this needs to be noted.

Chairman: I only permitted the Minister to come in on it to provide additional information to members. Normally, there is no debate when items are ruled out of order other than what I put on the record.

Deputy Anne Rabbitte: Why, then, do we have amendments?

Chairman: I regret this for the reasons I have already outlined and I voiced my support for other members on Second Stage. We are all on the same page here.

Deputy Anne Rabbitte: Do we just walk away and move on to Report Stage?

Chairman: This is not new but, unfortunately, it is the way the House works.

Deputy Anne Rabbitte: I apologise for being a new Deputy and not understanding it all perfectly.

Chairman: The Deputy is not new - she has been here for four years.

Deputy Anne Rabbitte: There are not too many things that we have brought through in this room, other than the affordable childcare scheme.

Deputy Denise Mitchell: To be notified at 6.30 p.m. on the day before that the amendments were out of order shows a total disregard of this committee's members.

Chairman: It does not show disregard.

Deputy Denise Mitchell: I think it does. This House-----

Chairman: I am not reopening the rationale as I have already set it out very clearly.

Deputy Denise Mitchell: All parties have worked together on these amendments.

Chairman: I know we did.

Deputy Denise Mitchell: To be notified at 6.30 p.m. on the day before-----

Chairman: That is the way it happens.

Deputy Denise Mitchell: If that is the way business is done in this House, something is seriously wrong.

Chairman: The Deputy should take it up with the Bills Office or the Ceann Comhairle's office. I cannot make a decision on advice I was not given until 6 p.m. I would like to facilitate a debate but I will not do so on amendments that have been ruled out of order. If Deputies want to have another bite of the cherry, and I invite them to do that, they can do so in a general discussion on section 6 after we have dealt with the amendments to that section. All members will be free to make a lengthy contribution at that point. We do not have to leave this room until 2 p.m., though I do not want us to go until that time.

Deputy Anne Rabbitte: The Chairman did not say that at the start.

Chairman: The Deputy will have to forgive me-----

Deputy Anne Rabbitte: The Chairman will have to forgive me, too, for coming in.

Chairman: I had made the assumption that the Deputy was familiar with how Committee Stage worked.

Deputy Anne Rabbitte: It is the role of the Chair to give us the rules in respect of proceedings.

Chairman: I apologise for making that assumption.

Deputy Anne Rabbitte: I apologise for coming in but I work to what I am told.

Chairman: That is understood. On Committee Stage in the Dáil, as is the case with local authorities, when items are ruled out of order, leeway is given. I have provided that leeway. The Minister made a contribution on an item that had been ruled out of order. We cannot have a debate on items that are out of order but the members can make general contributions on each section and I encourage them to do so. The member who proposes a motion that is in order can make two contributions, an initial contribution and one following the Minister's reply, while other members may make one contribution to an amendment. There are 27 amendments and only five have been ruled out of order. The members have the right to make a contribution to any amendment that is in order and I am here to ensure their rights are respected. They have to understand, though, that I also have a job to do. I do not want to have a row with anybody nor to curtail debate.

Deputy Sean Sherlock: The Chairman has made his point.

Chairman: I have. I have read out the rationale for amendment No. 2 being ruled out of order. Amendment No. 3 cannot be moved because it is consequential on amendment No. 1. The same rationale applies. Would the Deputy like me to read it out again?

Deputy Anne Rabbitte: Yes.

Chairman: Amendment No. 3 would require the District Court to appoint a guardian *ad litem* in all childcare proceedings and would enable the court to discharge that order where the child makes a request to that effect. Appointing a guardian *ad litem* in every childcare case before the District Court would create a substantial increase in the costs to the State. The amendment must, therefore, be ruled out of order as it would create a charge on the Revenue.

Amendment No. 4 is also out of order. It would require the Minister for Children and Youth Affairs to provide or arrange for the provision of legal advice to guardians *ad litem* in every case before the District Court for which they are appointed. The provision of legal advice in every case before the District Court would create a significant increase in costs for the State so the amendment must be ruled out of order as it would create a charge on the Revenue. The amendment is also somewhat consequential to previous amendments.

Amendment No. 5 has also been ruled out of order as it would require the Minister for Children and Youth Affairs to provide or arrange for the provision of legal advice to guardians *ad litem* in every case before the District Court for which they are appointed. The provision of legal advice in every case before the District Court would create a significant increase in costs for the State so the amendment must be ruled out of order as it would create a charge on the Revenue.

Amendments Nos 1 to 5, inclusive, not moved.

Chairman: Amendments Nos. 6 and 7 have been grouped and will be taken together. Amendment No. 7 is a physical alternative to amendment No. 6.

Deputy Anne Rabbitte: I move amendment No. 6:

In page 8, to delete line 3 and substitute the following:

“interests of the child, and

(c) to represent the child’s interests in the proceedings to which the guardian *ad litem* has been appointed.”.

This is self explanatory and deals with the interests of the child. The guardian *ad litem* Bill is about the status of the child in proceedings.

Deputy Kathleen Funchion: Amendment No. 7 ensures that the guardian *ad litem* will be part of all the proceedings and would therefore represent the best interests of the child at all times.

Deputy Sean Sherlock: I would like to hear the Minister’s response to the amendment and I reserve the right to revisit it on report Stage. I anticipate that the Minister may not be in favour of the amendment.

Deputy Katherine Zappone: It is pretty straightforward. I am happy to hear the Deputy’s response, but I am not inclined to accept the amendment because its insertion seems unnecessary to me as it essentially duplicates section 35E(1)(b), which reads, “having considered the views, if any, referred to in paragraph (a), to make recommendations to the court regarding what is in the best interests of the child”. The Bill already contains what is intended in the amendment and for that reason I reject the amendment.

Deputy Sean Sherlock: I accept that.

Chairman: The amendment is jointly tabled. The Deputies will have to come to an arrangement on it.

Deputy Sean Sherlock: I am prepared to withdraw the amendment but I reserve the right to revisit the matter on Report Stage.

Deputy Kathleen Funchion: No, I believe the wording in the amendment is stronger than what is currently in the Bill.

Deputy Katherine Zappone: How is that?

Chairman: Deputy Funchion’s name is on amendment No. 7. The amendment cannot be withdrawn unless all the Members who tabled it agree to so do. Deputy Rabbitte also wishes to press amendment No. 6. Does anyone wish to make a concluding remark?

Deputy Kathleen Funchion: I think we have stated our points.

Amendment put.

The Committee divided: Tá;, 4; Níl, 3.	
Tá;	Níl;

Funchion, Kathleen.	Farrell, Alan.
Mitchell, Denise.	Neville, Tom.
Rabbitte, Anne.	Zappone, Katherine.
Sherlock, Sean.	

Amendment declared carried.

Amendment No. 7 not moved.

Deputy Sean Sherlock: I move amendment No. 8:

In page 8, to delete lines 6 to 11 and substitute the following:

“(a) furnish to the court reports that—

(i) convey to the court any views expressed by the child in relation to the matters to which the proceedings relate, and

(ii) contain the recommendations of the guardian *ad litem* regarding what is in the best interests of the child and the reasons for those recommendations.”.

I would like to hear the Minister’s view on this amendment.

Deputy Katherine Zappone: I consider the amendment unnecessary, as the use of a report in legislation can be read effectively, as singular or plural as per section 18(a) of the Interpretation Act 2005. That is the primary reason I can see in terms of the change.

Current practice is that a report would be prepared for every court sitting. There is no intention to change the current practice, where the guardian *ad litem* may produce a number of reports over the course of one case. In addition, section 35E.(2)(c) places an obligation on the guardian *ad litem* to provide an update to the court on any additional matters relevant to the best interests of the child that come to his or her attention during the course of the performance of his or her functions. Effectively the provision is already in the Bill, as it is acknowledging that other reports can come forward. The meaning of report in the singular can be read as plural, effectively.

Therefore I think the amendment is unnecessary.

Deputy Anne Rabbitte: Chairman, we accept the point the Minister has made and therefore we will withdraw the amendment.

Deputy Kathleen Funchion: We accept the Minister’s interpretation.

Amendment, by leave, withdrawn.

Chairman: Amendments Nos. 9 and 19 are related and may be discussed together.

Deputy Sean Sherlock: I move amendment No. 9:

In page 8, lines 32 and 33, to delete “to that party” and substitute “that party shall be

provided with a reasonable opportunity to read the report.”.

Deputy Kathleen Funchion: The reason for this amendment is that while it is important that people will be able to view the reports, there is a fear that with the use of social media nowadays things end up in incorrect forums. We believe that people have the right to read the report. Should a person have additional needs and need a person to assist him or her in reading a report, the person should be able to have access to the report, but not have an actual copy, given the nature of things that had gone on in the past.

Deputy Katherine Zappone: I am not sure whether these amendments fulfil the purpose which was intended. Having heard Deputy Funchion outline the intention of these amendments, which is to ensure that a party has sufficient time to read a report, in reality the wording provided could be interpreted as removing the right of an unrepresented party to receive a copy of a report furnished to the court.

Under the proposed wording “such a party would have the right to read the report only”. Clearly it would not be appropriate that a party with legal representatives would receive a copy of a report but a party with no legal representatives would not. I suggest that the amendments could be interpreted in that way, effectively as removing the right of an unrepresented party to receive the report. I also understand there can be issues around the timely delivery of the reports to parties and to guardians *ad litem* in childcare proceedings. That could be addressed better by the rules of the court rather than in legislation. I do not know whether the Deputy’s concerns could be addressed in procedural issues relating to the Child Care Act and those are being examined as part of the overall review of the Act. These matters are also being addressed in the family courts Bill, which will be brought forward by the Minister for Justice and Equality, Deputy Flanagan soon. That is my reason for rejecting the amendment.

Deputy Kathleen Funchion: It would not be our understanding that the amendment would be interpreted differently for somebody who was not represented as compared to somebody who was represented. The point we are trying to make is that unfortunately at present copies of reports end up in very inappropriate forums and then one has the fallout from that. What we were trying to say is that people should be able to access the report and have assistance to do so, if they need it, for example if they have learning difficulties but that they would not be able to take the report away physically. This is fairly commonplace. There may be fallout and it could have repercussions for that person because the information is still out there in an inappropriate forum.

Deputy Katherine Zappone: I accept that it is a possibility. The rationale still stands that it could be interpreted to remove the right of an unrepresented party. Also effectively in doing that in breach of the *in camera* rule, the judge of the court has a right to penalise in that regard as well.

Deputy Kathleen Funchion: I understand that. That has happened, but my point is at that stage the information is out there and even if somebody is penalised, that does not necessarily change the fact that the information is out there.

I think we could revisit this on Report Stage.

Deputy Katherine Zappone: Withdraw and reflect.

Deputy Sean Sherlock: To quote the Minister, we will withdraw and reflect on the amendment.

Deputy Katherine Zappone: Okay. I will reflect on what the Deputies have said as well.

Chairman: We now come to amendment No 10 in the names of Deputies Funchion, Rabbitt and Sherlock. Amendments Nos. 10 to 13, inclusive, are related. Amendments Nos. 11 to 13, inclusive, are consequential to amendment No. 10. Amendments Nos. 10 to 13, inclusive, will be discussed together. If the response to amendment No. 10 is in the negative, amendments Nos. 11 to 13, inclusive, cannot be moved.

Deputy Kathleen Funchion: I move amendment No. 10:

In page 8, to delete lines 34 and 35.

This is a crucial amendment and we were glad that it was not ruled out of order. We believe that the guardian *ad litem* is being demoted to witness status, which means that he or she is not necessarily a party to all proceedings and that he or she can be called as a witness if required, which means they may not be involved in all of the proceedings and that they may be called as a witness for part of it, but not all of it and that they are operating in the dark in that regard. I strongly feel that this demotes the status of a guardian *ad litem*.

Deputy Katherine Zappone: I respect the Deputy's view but, again, I certainly do not think that is the case. Obviously we read the Bill as a whole, although I am not suggesting that the Deputy is not doing that, lines 34 and 35 on page 8 outline that:

The court or any party to the proceedings may call a guardian *ad litem* appointed for a child as a witness.

This does not limit the guardian *ad litem* to the role of witness only. There is no intention that this be the guardian *ad litem*'s only role, to demote the role, to use Senator Funchion's language. The provision does not exist in isolation and with any legislation must be read in conjunction with the whole of Part VA that is to be inserted into the Child Care Act 1991.

That includes the provision that a guardian *ad litem* is appointed for a child, and the right under section 35F(1) of a guardian *ad litem* to apply to the court for a report to be procured regarding the welfare of the child. The guardian *ad litem* is also given the very important function of informing the child of the recommendations contained in the report, the outcome of the proceedings, and such other matters relevant to the proceedings as the guardian *ad litem* considers appropriate. I believe all of these functions will require the guardian *ad litem* to be present throughout the proceedings.

Guardians *ad litem* may also continue to make section 47 applications. This section, which is already in the Child Care Act, allows them to make an application on any question affecting the welfare of a child in the care of Tusla. I do not think it demotes or restricts it. Many other functions are identified in the Bill. It is important to read the Bill as a whole.

Deputy Sean Sherlock: The Minister again makes the point that the Bill needs to be read as a whole. Looking at the section 35 provisions from an Opposition point of view, there can be gaps geographically in the system at District Court level. In some parts of the country there is quite a robust service. Again, to quote the Minister, in the absence of a family court system where we are relying on the District Court, we need to try to buttress the wording such that there is certainty. Where there are gaps in the service, we need to buttress that service to ensure that, for instance, in this amendment, people will have reasonable opportunity to read the report.

That is the spirit in which we are proposing the amendments.

Deputy Katherine Zappone: I understand.

Deputy Sean Sherlock: We can choose to press amendments or we can seek to work with the Minister to consider the matter further on Report Stage. My colleagues may wish to press the amendment, and if they do, I will support that.

Deputy Kathleen Funchion: I feel really strongly on this. I believe it is open to interpretation. The Minister is saying they might not be considered a witness on party to all proceedings. However, once the word “witness” is mentioned there, they might be seen as only a witness. This comes from the stakeholders and from people who deal with child welfare cases in the courts system. They are fairly adamant about this. By removing the word “witness”, we are protecting the current status. It does not have a cost to the Exchequer. On some of the other things, we have accepted the Minister’s explanation. I will not be backing down on this one.

Chairman: That is understood.

Deputy Anne Rabbitte: I concur with Deputy Funchion on that. When we discussed it in the Chamber the last time, I spoke strongly about the role of the witness, the definition of the witness, that the guardian would only be called once, and that he or she would then be asked to leave the proceedings. We all know that cases in family courts or any courts can take a long time. It is not over in just one sitting and could go on for nearly a year. That is why I do not like the idea of the word “witness”, and the one report or one viewing and then having to leave.

Deputy Katherine Zappone: If it is taken out, how would they be called at all?

Deputy Kathleen Funchion: They are party to the proceedings. That is what the stakeholders I deal with every day are saying.

Deputy Katherine Zappone: To be fair, we have also spoken to the stakeholders.

Deputy Kathleen Funchion: I would be suspicious given that our main amendment, which goes right to the heart of the interests and right of the child, was ruled out of order. I find it very difficult to take the advice we are being given from the other side. We are dealing with people who deal with them every day-----

Deputy Katherine Zappone: I did not give that.

Deputy Kathleen Funchion: -----who are telling us that the word “witness”-----

Deputy Katherine Zappone: That instruction to disallow did not come from me.

Deputy Kathleen Funchion: -----will demote the role of a guardian *ad litem*. We can have an argument all day, but I will press the amendment.

Chairman: How stands-----

Deputy Katherine Zappone: The Deputy mentioned the party issue. That comes later, but it is important to emphasise that as matters stand a guardian *ad litem* is not a party and has never been a party. At the court’s discretion he or she is sometimes allowed to exercise party-type rights. That is an important distinction because it emphasises that discretion resides with the court to allow the guardian *ad litem* to work for the child’s best interest.

Amendment put.

The Committee divided: Tá;, 3; Níl, 3.	
Tá;	Níl;
Funchion, Kathleen.	Farrell, Alan.
Rabbitte, Anne.	Neville, Tom.
Sherlock, Sean.	Zappone, Katherine.

Amendment declared lost.

Chairman: Standing Order 97(1) negatives a question when there is an equality of votes.

Amendment declared lost.

Chairman: Amendment Nos. 11 to 13, inclusive, cannot be moved as they are consequential to amendment No. 10.

Amendments Nos. 11 to 13, inclusive, not moved.

Chairman: Amendment No. 14 is in the names of Deputies Funchion, Rabbitte and Sherlock.

Deputy Sean Sherlock: I move amendment No. 14:

In page 9, to delete lines 1 and 2.

Deputy Katherine Zappone: I started discussing this in regard to the last issue. It is important to emphasise that, as matters stand, a guardian *ad litem*, GAL, is not a party, and has never been a party. It is at the court's discretion that they are sometimes allowed to exercise party-type rights. That is an important distinction but it emphasises that discretion resides with the court to allow the guardian *ad litem* to work for the child's best interests. It is important to acknowledge the overarching responsibility of the judge in the case is to vindicate the rights of the child and to behave proportionately in the interests of the child, and that there is no fundamental impediment to vindication of the fair procedure rights of the child in an arrangement where the guardian *ad litem* is not a party to the proceedings.

This provision does not remove this discretion but we want to make it clear that, effectively, there is no automatic right for the guardian *ad litem* to act as a party. This Bill sets out a guardian *ad litem* role that is based on the Children's Acts Advisory Board 2009 guidance. Its core functions are to ascertain the views of the child and to make recommendations to the court on what is in the best interests of the child. Party status does not sit well with this role as an independent resource appointed to ascertain the views of the child and make recommendations to the court. I would like to emphasise that the child can be made a party under the Child Care Act, as it stands, and, under this Bill, a child who is a party can also have a guardian *ad litem*. It is the child, not the guardian *ad litem*, who has a personal interest in the case, so I believe this is the most appropriate route for those children who want to, and for whom it is in their best interest to, be joined as a party. For these reasons, I cannot accept the amendment.

Deputy Sean Sherlock: I have had regard to public interventions. In one case, a solicitor of long standing who is operating in Cork, Mr. Colm Roberts, is on the public record as part of process of interrogating and examining the role of guardians *ad litem*. He stated in a recent

presentation:

In 2009 I raised my concern in another child care case before the District Court in Cork as I believed that as a legal advisor for parents, I was at a disadvantage in cases where the extent and role of the Gal was unclear, and particularly the extent and role of his/her legal representation was even more unsettling as it seemed to move the Gal into a more adversarial role.

This particularly became more acute in circumstances where the Gal was supporting the application for Care Orders by the Child & Family Agency (previously HSE). This is very problematic for the Court to balance the right of the Gal to fully participate in proceedings that he/she has been appointed in and at the same time ensure that natural justice and fairness to all parties is protected and vindicated. This issue was dealt with in detail [in] a judgment by District judge Mitchell.

In putting forward the amendment to delete, we want to strike a balance between the presumption in favour of the appointment of the guardian *ad litem* and the discretion of the District Court in the absence of a fully fledged family courts infrastructure, while seeking to give a voice to the guardian *ad litem*, which is the voice of the child before the court. I do not see what is so injurious about our intention to delete these lines. I am not a lawyer and I have never been a witness before a court, in particular proceedings before the family courts, so I am a layman in this respect. We are seeking to ensure that voice is absolutely robust in the absence of there being a fully fledged family courts infrastructure. Again, this goes back to the geographical disparities that exist between certain parties where, without being disrespectful to District Court judges, not every District Court judge has the training in respect of these types of cases that come before them. Is there a formula of words that would copperfasten the importance of the role of the guardian *ad litem* without necessarily calling for them not to be a party? The Minister would say that is in other sections and is already inherent within the legislation.

We are effectively trying a belt and braces approach but I have an open mind about how the Minister might respond to that.

Deputy Anne Rabbitte: I agree with Deputy Sherlock that the form of words is important. We need a form of words that copper-fastens the position for a child with disabilities who may be non-verbal. We also need to into consideration that such a child needs to be party to proceedings and I have not heard that come through. We are talking in the round here about people who are able to articulate but we must also talk about the voice of a child with disabilities. That is a role I seek for the guardian *ad litem* and I do not see it shining through in the way the legislation is being presented at the moment. Deputy Sherlock is right that the form of words used should nearly remove the discretion allowed to judges in appointing guardians *ad litem* in order that we protect children. That is what I am looking for.

Deputy Katherine Zappone: To respond to Deputy Sherlock and the solicitor he quoted, we are trying to provide clarity. I agree with that.

We are using this form of words to indicate that a guardian *ad litem* being a party to proceedings is not the default position. That is the primary issue.

On the point raised by Deputy Rabbitte, as I understand it, a child can be made a party under this Bill, which is not current situation. Perhaps I am incorrect about that. A child, including a disabled child, can be made a party with a guardian *ad litem*.

Deputy Anne Rabbitte: How can we make that possibility the reality? That is the importance of the form of words.

Deputy Sean Sherlock: I have sympathy for Mr. Roberts if he represents a parent. I mention Mr. Roberts in particular because he is on the public record having made submissions to this process and Bill but he could be any solicitor around the country. This is an adversarial system. I have sympathy for the Minister when she states that the guardian *ad litem* is not automatically a party to proceedings. However, we are trying to strike a balance and recognise the fact that the system operates differently in different parts of the country. Deputy Rabbitte mentioned a child with intellectual disabilities or a child with no voice and there are any number of types of case to which we can refer but in certain parts of this country, there is no automatic entitlement, right or prospect of a child having a guardian *ad litem*. Does the Minister acknowledge that is the case?

Deputy Katherine Zappone: The Deputy has raised that point a couple of times. The primary objective and whole point of what we are doing is to change the situation, as described by the Deputy. The legislation will clearly define the role of the guardian *ad litem* and place the guardian *ad litem* on a statutory basis. It will establish an office to oversee that and a panel. This will put a whole new system in place so the situation to which Deputy Sherlock refers will no longer be the case. It will take some time to roll that out but we are trying to create law to change that situation. I do not know if I can accept the rationale that we need to have certain things provided for in law to help us deal with where we are now, as distinct from where we are going. I believe that answers the question the Deputy has raised.

The line, “A guardian *ad litem* appointed for a child is not a party to the proceedings”, is used because it is our argument that the guardian *ad litem* has no personal interest in the case and it is important for him or her to be an independent resource for the child, whatever his or her background identity.

Deputy Sean Sherlock: I want to confer with my colleagues for a moment, if I may. It is like being on a quiz show.

Deputy Katherine Zappone: If the Deputies withdraw the amendment, we could revisit the matter on Report Stage after I have reflected on what they have said.

Deputy Sean Sherlock: Subject to the agreement of my colleagues, that seems to be a reasonable proposal.

Amendment, by leave, withdrawn.

Chairman: Amendments Nos. 15 to 18, inclusive, and 20 to 22, inclusive, are related. Amendments Nos. 17, 18 and 20 to 22, inclusive, are consequential on amendment No. 16. Amendments Nos. 15 to 18, inclusive, and 20 to 22, inclusive, may be discussed together.

Deputy Sean Sherlock: I move amendment No. 15:

In page 9, line 6, to delete “subject to subsection (3),”.

Deputy Katherine Zappone: I will speak to amendments Nos. 15 and 16, with which I do not agree.

Chairman: The Minister is speaking to a larger group of amendments.

Deputy Katherine Zappone: The primary purpose of requiring a guardian *ad litem* to consult parties to the proceedings, or the relevant counsel or solicitor, is to ensure there are no unnecessary delays in proceedings or disruptions to the child by a guardian *ad litem* applying unnecessarily to a court to procure a report that the social worker has already requested. In addition, it is important for all parties to the proceedings to be aware of what reports are being requested and potentially undertaken. We are trying to ensure that communication is ongoing. It is also important to note that the guardian *ad litem* is under no obligation to come to an agreement with other parties. This subsection seeks to ensure that only appropriate communications take place in the interests of justice and for the good of the child. The limitations on the right of a guardian *ad litem* to request reports that already exist and are still in date are in place for good reason. Duplication of reports can be wasteful of time and resources and can slow down court proceedings unnecessarily. Subjecting a child to numerous interviews with experts without good reason is not in the best interests of the child.

Chairman: On the basis that we are discussing amendments Nos. 15 to 18, inclusive, and 20 to 22, inclusive, the Minister is welcome to make a lengthier contribution if she wishes.

Deputy Katherine Zappone: That is sufficient because the other amendments are dependent on amendments Nos. 15 and 16.

Deputy Sean Sherlock: It will be clear to the Minister that we are also engaging with the relevant stakeholders in respect of these amendments. We are proposing these amendments jointly on foot of advice we have received. We reserve the right to revisit these amendments subject to a discussion with the various stakeholders with whom we have been engaging.

Deputy Anne Rabbitte: One of the reasons for these amendments was to revisit an issue addressed in amendment No. 1, which has fallen and was not discussed. It goes back to a core value about the age of the child and the consent of the child who does not wish to have a guardian *ad litem*. In those circumstances, a report would be produced and submitted to the courts acknowledging that the child, for reasons of age or whatever else, had chosen not to have representation. We have sought to have included in the Bill a provision whereby a report would be produced to reflect the fact that some children may choose not to have a guardian *ad litem*. That report would issue in the course of proceedings to reflect that the child was offered a guardian *ad litem* but had chosen not to avail of one. As such, this document would be on the record and would address any concern that, down the line, possibly in an appeal, a child would claim that a guardian *ad litem* was not offered to him or her. That offer would be recorded in a document.

Deputy Katherine Zappone: I understand what the Deputy is saying.

Deputy Sean Sherlock: In support of that, the reasoning for our amendments is that guardians could and would have the time to engage with children in a way that social workers would not. We have borne witness to the infrastructure that exists in this country, the shortage of social workers, the constraints and so on. Where there were court proceedings, the guardian *ad litem* would fulfil a specific role. I do not think the Minister would necessarily disagree with what I am saying. We are all largely on the same page about seeking to ensure that the rights of the child are adhered to as per the constitutional amendment. Again we find ourselves slightly constrained with regard to what we proposed.

Deputy Anne Rabbitte: These amendments come from a good space.

Deputy Katherine Zappone: I appreciate that. I think the Deputies would agree that

guardians *ad litem* are not social workers. We hope that in the short to medium term, the issue with the shortage of social workers will change.

Deputy Sean Sherlock: We are not saying that they are either.

Deputy Katherine Zappone: One of the primary concerns underlying saying “No” to the amendments is the issue with delay. I think that the judge really must consider the views of the child before appointing a guardian *ad litem*.

Chairman: I remind members that we are discussing amendments Nos. 15 to 18, inclusive, and 20 to 22, inclusive, which is a lot. If members want to make another stab at some of the amendments, please do so, because we are discussing them together and once we get to them later, they will be taken without debate. As I said at the start, I want members to say as much as they want to say.

Deputy Anne Rabbitte: I thank the Chairman. I hear what the Minister is saying and I think that she hears what we are saying. Without labouring the point, it really goes back to removing the discretion of the judge. It also relates to work on the postcode lottery and to having the voice of the child heard.

Deputy Katherine Zappone: Did the Deputy refer to removing the discretion of the judge?

Deputy Anne Rabbitte: Yes, removing the discretion. When I say “discretion,” I mean that they should ensure that the voice of the child is heard. That discretion does not operate very fairly around the country. In many court sittings-----

Deputy Katherine Zappone: This Bill is here for that reason.

Deputy Anne Rabbitte: Absolutely. This is why we are trying to amend it, to ensure that what is done in some court systems is replicated. It is done very well in the High Court and the Supreme Court. We are trying to ensure that that is replicated at District Court level, down to the small District Courts, such as at Loughrea District Court. I know that depending on who is sitting on a particular day or if someone is on annual leave, the interpretation differs. We are trying to remove that to ensure there is fairness given to the voice of the child.

Amendment put and declared lost.

Deputy Sean Sherlock: I move amendment No. 16:

In page 9, to delete lines 23 to 25.

Amendment put and declared lost.

Chairman: Since amendment No. 16 has been declared lost, amendments Nos. 17, 18 and 20 to 22, inclusive, cannot be moved.

Amendments Nos. 17 and 18 not moved.

Deputy Sean Sherlock: I move amendment No. 19:

In page 9, line 32, to delete “to that party” and substitute “that party shall be provided with a reasonable opportunity to read the report,”.

Amendment put.

The Committee divided: Tá;, 4; Níl, 3.	
Tá;	Níl;
Funchion, Kathleen.	Farrell, Alan.
Mitchell, Denise.	Neville, Tom.
Rabbitte, Anne.	Zappone, Katherine.
Sherlock, Sean.	

Amendment declared carried.

Amendments Nos. 20 to 22, inclusive, not moved.

Deputy Kathleen Funchion: I move amendment No. 23:

In page 10, line 22, after “subsection (1)” to insert the following:

“, which reasons must relate to the Data Protection Regulation and/or the Data Protection Act 2018 and/or legal professional privilege.”.

Deputy Katherine Zappone: I regard the amendment as unnecessary because subsections (2) and (3) already provide for this. In addition, further protection is set out at the beginning of subsection (2) which reads, “Notwithstanding anything contained in any other enactment or rule of law”. I am fully in agreement with the intention here, but the Bill as worded already addresses the issue. The intention of this section is to ensure that the guardian *ad litem* has recourse to the court if he or she believes that the Child and Family Agency is not giving him or her information he or she requires to undertake his or her functions.

Amendment put.

The Committee divided: Tá;, 4; Níl, 3.	
Tá;	Níl;
Funchion, Kathleen.	Farrell, Alan.
Mitchell, Denise.	Neville, Tom.
Rabbitte, Anne.	Zappone, Katherine.
Sherlock, Sean.	

Amendment declared carried.

Chairman: Amendment No. 24 has been ruled out of order as it gives the courts discretion over when an order requiring the appointment of a guardian *ad litem* shall cease to have effect. In the Bill as drafted, an order ceases to have effect, *inter alia*, on the expiry or refusal by a court to make a care or supervision order where a child turns 18 years of age. The effect of the amendment is to potentially continue the guardian *ad litem* order in place indefinitely, thereby incurring costs on the State in paying the guardian’s costs and expenses. In accordance with Standing Order 179(3), the amendment is ruled out of order as it would create a charge on revenue.

Amendment No. 24 not moved.

Deputy Sean Sherlock: May I get written statement in regard to the ruling on amendment No. 24?

Chairman: Yes. What is the status of amendment No. 25?

Deputy Sean Sherlock: I will withdraw it, while reserving the right to revisit the issue on Report Stage.

Amendment No. 25 not moved.

Chairman: Amendment No. 26 is also ruled out of order as it would require the Ombudsman for Children to monitor the operation of the guardian *ad litem* service and produce regular reports on any difficulties identified of an administrative, operational or financial nature. The oversight role would represent a significant departure from the current functions of the ombudsman and would require significant additional resources to discharge, which the State would have to fund. As the amendment would create a charge on the revenue, it is ruled out of order in accordance with Standing Order 179(3).

Amendment No. 26 not moved.

Deputy Sean Sherlock: I move amendment No. 27:

In page 17, to delete line 3 and substitute the following:

“2012.

Annual Report

35R. The Minister will cause an annual report in respect of the management and functioning of the national guardian *ad litem* service to be published on an annual basis by or before the conclusion of each calendar year.”.”.

Deputy Katherine Zappone: It has always been my intention that the guardian *ad litem* office would produce an annual report of its activities. There is a lamentable absence of comprehensive, quantifiable data about childcare proceedings in Ireland. The childcare law reporting project’s valuable work has provided a window into those proceedings but we are still lacking reliable quantifiable data on childcare cases. It is my intention that the guardian *ad litem* office will endeavour to provide information on its activities, while respecting the important privacy protections provided by the *in camera* rule and GDPR. I am happy to consider bringing forth an amendment to provide for the publication of an annual report. I will consult the Attorney General’s office on the appropriate wording.

I take this opportunity to advise Deputies that I also intend to bring forward two amendments on Report Stage to the *in camera* rule under section 29 of the Child Care Act. As I have mentioned, the childcare law reporting project provides a valuable window into these proceedings, but there is currently no expressed basis for Department officials to attend proceedings. This creates difficulties for the Department in terms of monitoring the implementation of the 1991 Act and the operation of the guardian *ad litem* executive office into the future. While I recognise the importance of the *in camera* rule for the protection of the privacy of children and their families, I am also conscious of the seriousness of State intervention in family life under the 1991 Act and the obligation for legislation and policy to be informed by evidence from our courts. I have secured Government approval for an amendment to section 29 of the 1991 Act to authorise the attendance of two specific groups of officials, including those who will have official responsibility for managing guardians *ad litem* and those who will have a specific role in monitoring the implementation of the 1991 in order to revise and improve it.

The second proposed amendment will enable the childcare law reporting project and other similar bodies to exercise their functions properly by ensuring that they have access to all relevant reports. I emphasise that these proposed amendments will not impact on the court's ability to restrict access to the court on a case-by-case basis but nor will they impact on the court's ability to restrict access to court documents, if desired, in the specific circumstances of a particular case. Furthermore, no person will be permitted to make public information likely to lead members of the public to identify either a party to the proceedings or a child to whom proceedings relate. Additionally, I am considering the possibility of introducing a provision which would allow for a review of the reformed guardian *ad litem* arrangements under this Bill. I have instructed my officials to explore this issue with parliamentary counsel. The intention is that such a review would commence not later than three years following the coming into operation of this legislation.

Deputy Sean Sherlock: My first instinct in regard to what the Minister is proposing to introduce on Report Stage in regard to having her officials attend at family courts is to be concerned about it. However, we will have an opportunity to examine that proposal further on Report Stage.

I would like to speak to section 35-----

Chairman: We must deal with the amendment first.

Deputy Sean Sherlock: I accept what the Minister said. I will withdraw the amendment, while reserving the right to reintroduce it on Report Stage but I do not understand why the Minister cannot accept it.

Chairman: Noted.

Deputy Sean Sherlock: In light of what the Minister said subsequent to speaking to my amendment-----

Chairman: We must first deal with the amendment.

Amendment, by leave, withdrawn.

Question proposed: "That section 6, as amended, stand part of the Bill."

Deputy Sean Sherlock: My understanding of what the Minister said is that she proposes to bring forth an amendment to allow her officials to attend judicial proceedings.

I am worried about the proposed new section 35D(2) of the Child Care Act 1991, as inserted by the section of the Bill we are discussing, which states:

Following the making of an order under section 35B(3), the Minister may at the request of the guardian *ad litem* appointed for the child provide, or arrange for the provision, to the guardian *ad litem* of such legal advice or legal representation, or both, as the Minister considers appropriate having regard to the matters specified in subsection (3).

The proposed new section 35B(3) states:

In proceedings under Part IV, IVB or VI the District Court, of its own motion or on the application of any party to the proceedings, shall consider whether to direct that a guardian *ad litem* be appointed for a child and the court may by order so direct.

I wonder where the Minister is going with the creation of this entity within the Department of Children and Youth Affairs. I may have inadvertently and incorrectly stated on Second Stage that responsibility for this entity will be given to Tusla. That was an error on my part. We are now creating an entity that will come under the remit of the Minister of the day. Obviously, the Minister will have control of its budget. While the Minister will not become a party to court proceedings, he or she will be able to go into courts. Could that put the Minister into conflict with the child law reporting project, for instance? We have only just received this information. I am speaking for myself as an Opposition spokesperson when I say that all stakeholders continue to have a lot of respect for the independence of the Child Care Law Reporting Project. Any recommendations made arising from the work of the project have the confidence of everybody who is involved in the whole area of childcare law.

Deputy Katherine Zappone: Unlike the Deputy in the context of one of the previous issues, I am going to give a response because I have respect. First of all, I am just providing information on what I intend to do. We can discuss it then. The Deputy has said he has “only just received this information”. I am offering information that can be reflected on later. I hope that is a good thing. On the particular issue raised by the Deputy, I must point out that underneath the amendment is an intention that officials will be there to be observe and will not have any party status. They will support the new guardians *ad litem*. This provision will rarely be used and will be used by leave of the court only. Those are a couple of the things I could say right now on this matter. I suppose it will be particularly appropriate to discuss and debate it when we have the Report Stage amendment.

Deputy Sean Sherlock: Will it be left to the discretion of the District Court judge?

Deputy Katherine Zappone: As I have said, we will debate that when we bring forward the amendment.

Chairman: That is the Minister’s wish.

Deputy Sean Sherlock: May I ask-----

Chairman: Go ahead.

Deputy Sean Sherlock: It is being introduced now.

Deputy Katherine Zappone: I am just mentioning that we are going to bring forward an amendment.

Deputy Sean Sherlock: I appreciate that. I appreciate the fact that it is being introduced for discussion on Report Stage.

Deputy Katherine Zappone: I thank the Deputy. I also appreciate that.

Deputy Sean Sherlock: It was never anything but-----

Chairman: Okay.

Deputy Sean Sherlock: It is still being introduced. The Minister did not mention this on Second Stage. It was not included in her Second Stage speech. I wonder-----

Deputy Katherine Zappone: How about that?

Deputy Sean Sherlock: Well, how about the fact-----

Chairman: Okay.

Deputy Katherine Zappone: We can have reflections subsequent to Second Stage speeches.

Deputy Sean Sherlock: I have-----

Deputy Katherine Zappone: Of course we can.

Chairman: Hang on a second, please.

Deputy Katherine Zappone: Of course we can.

Chairman: Let us keep it civil.

Deputy Sean Sherlock: I am being absolutely civil. I merely wish to say that this is being introduced on Report Stage.

Chairman: It has not been introduced yet but it will be.

Deputy Sean Sherlock: I am just making the point. It would have been useful to have known this on Second Stage because it would have given us a better chance to discuss these matters at this stage of the proceedings, when amendments are being introduced on Committee Stage. The Minister has yet to address the reason she intends to bring forward the Report Stage amendment.

Chairman: I thank the Deputy.

Deputy Kathleen Funchion: I wish to make a few concluding remarks on this matter. I was genuinely disappointed that amendment No. 2, which went to the heart of the Bill, was ruled out of order. It spoke to the reason the guardian *ad litem* system exists in the first instance. I understand and accept the point the Minister has made about a child who might not want to have a guardian *ad litem* or about straightforward cases in which there is no need for a guardian *ad litem*. We allowed for that in amendment No. 2, which stated: "The District Court may discharge an order directing the appointment of a guardian *ad litem*, on the application of the guardian *ad litem*, if the child so requests." We understand that the appointment of a guardian *ad litem* is not necessary in certain cases. In other cases, the child does not want a guardian *ad litem* to be appointed. We think it would be better to say from the start to every child in care that he or she has a right and an entitlement to a guardian *ad litem*. If we are genuinely interested in representing children, being the voice of children and ensuring the interests and rights of children are heard, listened to and respected, this is the crux of the matter. I find it very difficult to support this legislation without this amendment being factored into it. That is why I asked earlier if there is any way of looking at this issue in advance of Report Stage. I would appreciate it if such a way could be found. I feel very strongly about this issue. If we cannot find a compromise or a solution in this respect, I will vote against the Bill on Report Stage and I will advise my party colleagues to do likewise. It is hypocritical to state that we want this system to be in place to ensure children in care are protected, while at the same time saying that not every child in care will get a guardian *ad litem*. It is definite that children will fall through the cracks. In years to come, cases will be taken against the State by people who feel they should have been given a guardian *ad litem* but no such opportunity was provided to them. While I understand what has been said about the cost to the Exchequer, the issue goes beyond that. I

found it difficult to go through the rest of the Bill after this amendment was ruled out of order. This aspect of it is the heart of the matter for me. I will wait to see whether it is rectified in advance of Report Stage.

Deputy Anne Rabbitte: I thank the Minister for her time. As stated earlier when she was not present, there is a great deal of good in the Bill. We have focused on one section of the Bill in our amendments. It is important to acknowledge that there is a lot of good stuff in the Bill. Most of the amendments that have been proposed relate to section 6. I have met officials from her Department. I would welcome another meeting if that could be facilitated. I agree with Deputy Sherlock, who said that this is about the language. I firmly believe there is a wording that could be used. Like the Minister, I am a purist. There are certain things we believe. I am a purist when it comes to my belief that every child should have the opportunity to avail of the services of a guardian *ad litem* if those services are needed or if he or she chooses to avail of those services. We have discussed children who do not want to have the opportunity to avail of a guardian *ad litem*. Every child who finds himself or herself in these circumstances should have the opportunity to have a guardian *ad litem*. Maybe we can meet somewhere to discuss that further. I do not want the Report Stage debate to happen without everything having been teased out in its entirety. I would like to see the Bill passed. I would like to think that common ground can be found. When I arrive at a committee meeting, I do not like to feel, as I did today, that another move is taking place without the committee having had enough time to address it. While I thank the Minister for flagging what she has just presented to us, I emphasise that a great deal of discussion needs to take place before we get to Report Stage. We need to find a solution. The current system is working in certain parts of the country, but it is not working everywhere. Geography has a significant part to play in this. Although there is a lot of good in this legislation, when I walk out of this committee room I will continue to be disappointed with section 6.

Deputy Denise Mitchell: I will keep this brief. I am really disappointed the Minister has ruled particularly amendment No. 2 out of order. She gave her reasons for ruling amendment No. 1 out of order and then listed the reasons given for ruling amendment No. 2 out of order. She said that sometimes young children, particularly teenagers, may not want a guardian *ad litem*. We have covered that in that amendment, so she gave her reasons for ruling amendment No. 1 out of order, which we have covered in amendment No. 2. All children should be given the opportunity to have a guardian *ad litem*. I think we are losing sight of what this Bill is about. It is about children's interests. We all sit here and say a social worker can do this. A social worker cannot, and I speak from experience regarding the service of guardians *ad litem*. Sometimes children are sick to their back teeth of talking to officials, and they see social workers as officials. They see their carers and their parents and they are caught in the middle, but the guardians *ad litem* are their voice. I know this from experience because I have heard children ask, when they would not discuss something with a social worker, for such and such to be called because that person was the child's voice. The Minister is taking away these children's opportunity to have that voice.

Question put and agreed to.

Sections 7 to 9, inclusive, agreed to.

SCHEDULE

Question proposed: "That the Schedule be the Schedule to the Bill."

Deputy Sean Sherlock: On the scheduling, and just-----

Chairman: This is the Schedule, as opposed to the scheduling.

Deputy Sean Sherlock: On the Schedule, since I have not had an opportunity to speak to the fact that my amendment was ruled out of order in respect of the role of the-----

Chairman: We have moved on but I will allow the Deputy to go on.

Deputy Sean Sherlock: I thank the Chairman. I really appreciate that. It would have been useful to have heard from the Minister on that. Perhaps the Minister-----

Chairman: Is that on the ruling out of order of the amendment?

Deputy Sean Sherlock: On the issue of the role of the ombudsman in respect of the legislation before us and whether that could be discussed on Report Stage.

Chairman: I will invite the Minister to make some concluding remarks, and she might be kind enough to address that.

Deputy Katherine Zappone: Of course.

Question put and agreed to.

Title agreed to.

Bill reported with amendments.

Chairman: I now invite the Minister to make some concluding remarks. If members wish to make further contributions, they may do so.

Minister for Children and Youth Affairs. (Deputy Katherine Zappone): I thank all members for their contributions. To be perfectly clear, some of the primary concerns and disagreements we have had in the room this morning concern decisions that were made by the Bills Office rather than my Department or myself. Neither I nor officials had any hand in making those decisions, as members will be aware.

We are all engaged in making law from our own perspectives to ensure that the best interests and the voice of the child are heard in the context of people's experiences. Things need to improve in order for this to happen and, as referred to a number of times in the course of this morning's meeting, in order to ensure consistency in that regard throughout the country. In light of that, we have all engaged in deep reflection and done much reading on this. I have also consulted a number of stakeholders. I know that vested interests have also participated in the conversations. It is important that, as a result of that kind of deeper reflection, we try to make the best law we possibly can.

I look forward to discussing the amendment Deputy Sherlock tabled, which, as he said, he will consider resubmitting on Report Stage. We just have to check the wording with the Office of the Parliamentary Counsel. Again, that is standard practice. Furthermore, Deputy Sherlock may wish to offer his rationale for tabling the amendment, but I was not in a position to accept it because it suggests that the ombudsman is effectively made responsible for monitoring the court's conduct during *in camera* proceedings, and the Bill has been framed with regard to the separation of powers. I could expand on that, but that is the heart of reflection on the matter and-----

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Deputy Sean Sherlock: Could the Minister write to me to expand on the point?

Deputy Katherine Zappone: Sure. I would be happy to-----

Chairman: I ask the Minister to do so through the secretariat.

Deputy Katherine Zappone: Exactly. I am happy to leave it at that on that amendment. We will reflect on all the conversations and deliberations and come back on the next Stage.

Chairman: I thank the Minister for her final contribution. Members may or may not be aware that on Committee Stage, the Chairman of a committee is not allowed to make a contribution on an amendment or any section of a Bill unless he or she vacates the Chair. On that basis I am required to be impartial. My only comment is to thank the members for their attendance and their contributions to the completion of Committee Stage of the Bill. I thank the Minister and her officials for their attendance.

Message to Dáil

Chairman: In accordance with Standing Order 90, the following message will be sent to the Clerk of the Dáil:

The Select Committee on Children and Youth Affairs has completed its consideration of the Child Care (Amendment) Bill 2019 and has made amendments thereto.

The select committee adjourned at 11.48 a.m. *sine die*.