

# DÁIL ÉIREANN

## AN ROGHCHOISTE UM LEANAÍ, COMHIONANNAS, MÍCHUMAS, LÁN- PHÁIRTÍOCHT AGUS ÓIGE

### SELECT COMMITTEE ON CHILDREN, EQUALITY, DISABILITY, INTEGRA- TION AND YOUTH

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*Dé Céadaoin, 9 Márta 2022*

*Wednesday, 9 March 2022*

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Tháinig an Romhchoiste le chéile ag 6 p.m.

The Select Committee met at 6 p.m.

Comhaltaí a bhí i láthair / Members present:

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Teachtaí Dála / Deputies	
Ivana Bacik,	
Holly Cairns,	
Cathal Crowe,	
Alan Dillon,	
Kathleen Funchion,	
Jennifer Murnane O'Connor,	
Roderic O'Gorman (Minister for Children, Equality, Disability, Integration and Youth),	
John Paul Phelan,	
Mark Ward.	

Teachta / Deputy Patrick Costello sa Chathaoir / in the Chair.

## **Birth Information and Tracing Bill 2022: Committee Stage (Resumed)**

### **SECTION 10**

Debate resumed on amendment No. 140:

In page 20, to delete lines 11 to 24.

- (Deputy Kathleen Funchion)

**Vice Chairman:** No apologies have been received. Once again I welcome the Minister for Children, Equality, Disability, Integration and Youth, Deputy Roderic O’Gorman, and his officials to today’s meeting. I will start with the usual note on privilege. All witnesses are reminded of the long-standing parliamentary practice to the effect that they should not criticise or make charges against a person or entity by name or in such a way as to make him, her or it identifiable or otherwise engage in speech that might be regarded as damaging to the good name of the person or entity. Therefore, if their statements are potentially defamatory in respect of an identifiable person or entity, they will be directed to discontinue their remarks. It is imperative that they comply with such direction.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official either by name or in such a way as to make him or her identifiable. I remind members of the constitutional requirement that they must be physically present within the confines of the Leinster House complex in order to participate in public meetings. I will not permit a member to participate where he or she is not adhering to this constitutional requirement. Therefore, any member who attempts to participate from outside the precincts will be asked to leave the meeting. In this regard, I ask members partaking via Microsoft Teams that, prior to making their contributions, they confirm that they are on the grounds of the Leinster House complex.

Please note that in order to limit the risk of spreading Covid-19 the service encourages all Members, visitors and witnesses to continue wearing face masks when moving around the campus or when in close proximity to others. We ask them to please be respectful of other people’s physical space. They are also asked to adhere to any public health advice.

I remind members that, should a vote be called, they must physically come to the committee room in order to vote. We will now resume consideration of the Bill on amendment No. 140. As the discussion on the amendment has already taken place, we will go straight to putting the question in a moment. I remind everybody, including me, that as we move through amendments I will hear from the group of proposers of the amendment and then input from any members of the committee who wish to comment before getting a response from the Minister. We can then move to putting the question on the amendment. Amendment No. 140 was discussed with many other amendments.

Amendment put and declared lost.

**Deputy Ivana Bacik:** I move amendment No. 141:

In page 20, lines 20 and 21, to delete “, and an information session has already taken place”.

Amendment put and declared lost.

**Senator Ivana Bacik:** I move amendment No. 142:

In page 20, lines 23 and 24, to delete “and no information session has taken place”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 143:

In page 20, to delete lines 25 to 28.

Amendment put and declared lost.

**Senator Ivana Bacik:** I move amendment No. 144:

In page 20, line 25, to delete “*paragraph (a), (b), (c) or (d)* of”.

Amendment put and declared lost.

**Senator Ivana Bacik:** I move amendment No. 145:

In page 20, to delete lines 29 to 34.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 146:

In page 20, after line 37, to insert the following:

“(8) Where no birth information is available, the Authority shall seize all records relating to the relevant person’s adoption and/or illegal birth registration and open an investigation into what transpired. The applicant will be kept informed and will be consulted throughout the course of the investigation.”.

Amendment put and declared lost.

Section 10 agreed to.

## NEW SECTION

**Deputy Kathleen Funchion:** I move amendment No. 147:

In page 20, after line 37, to insert the following:

**“Data controllers to provide personal data on application by relevant person aged 16 years or over**

11. (1) A relevant person who has attained the age of 16 years may apply to a data controller for the provision by the data controller to him or her of all of the relevant person’s personal data that is held by the controller.

(2) All personal data will be processed in accordance with the General Data Protection Regulation and the Data Protection Act 2018.”.

This amendment seeks to ensure the Bill is robust and provides for cases in which no birth

information is available. In such a case, this new insertion in the Bill would seek that the authority would seize all records relating to the relevant person's adoption or an illegal birth registration and open an investigation. It is crucial that adoptees know what transpired and that the authority should make every attempt to keep those persons informed.

**Minister for Children, Equality, Disability, Integration and Youth (Deputy Roderic O'Gorman):** This amendment is linked to amendment No. 78, upon which we have already voted and which was defeated. The amendment seeks to include a definition of personal data in the Bill. As we already have a definition of personal data - the definition used in the general data protection regulation - we do not propose to accept a new and different definition of personal data. I do not accept the amendment.

Amendment put and declared lost.

## SECTION 11

**Vice Chairman:** Amendments Nos. 148 to 154, inclusive, are related. Amendment No. 154 is a physical alternative to amendment No. 153. Amendments Nos. 148 to 154, inclusive, may be discussed together.

**Deputy Kathleen Funchion:** I move amendment No. 148:

In page 21, line 5, after "her" to insert ", records containing".

Amendments Nos. 148 to 150, inclusive, seek to ensure or confirm people's GDPR rights to their personal data. The amendments are intended as a safeguard to ensure that Tusla provides records and not just information from the records. It is a key concern for people that they may not be given the actual record but information extracted from it. We are concerned that categories of information are open to a range of different interpretations. Given people's experiences in the past and how this has been handled in the past, there is a fear that personal data will be held back.

Amendment No. 151 seeks to change the language so that data controllers are not given a get-out clause under the legislation. Amendment No. 152 is very similar to amendments Nos. 148 and 150. Amendments Nos. 153 and 154 concern the provision in the Bill to provide a statement setting out the information contained in records, as opposed to a full schedule of records as required under GDPR. If a person is not provided with a full schedule of records, he or she will not be able to ascertain what is being held back. This, in turn, may inhibit the person's ability to know about records that have been withheld.

**Deputy Roderic O'Gorman:** I will speak to amendments Nos. 148 to 154, inclusive, collectively. The first issue is around the discussion on the release of records as opposed to information. I seek to reassure Deputies now, as I have on a number of similar amendments previously, that we are not just releasing information; we are releasing copies of the records. This is provided for in relation to birth information, care information and medical information. It will not just be a summary of what is on the records available but copies of those records. I do not believe the sections of these amendments seeking to insert the word "records" is necessary, as that issue is already provided for. Copies of records will be provided and that is already provided for throughout the legislation.

Amendment No. 154 proposes the provision of a schedule. Again, I argue that this is covered by section 11(2)(b), which sets out a statement outlining the records and categories of information to be released and which will be issued. As I understand it, this is the same as the

intention of amendment No. 154. I believe, therefore, that this point is already covered in the legislation. On that basis, I do not believe these amendments are necessary and I cannot accept them.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 149:

In page 21, between lines 8 and 9, to insert the following:

“(d) any other records on the relevant person’s file.”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 150:

In page 21, between lines 8 and 9, to insert the following:

“(d) the personal data of the relevant person.”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 151:

In page 21, line 11, to delete “, to the extent that it is practicable to do so,”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 152:

In page 21, line 12, after “contain” to insert “the personal data of the relevant person,”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 153:

In page 21, to delete lines 15 to 17.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 154:

In page 21, to delete lines 15 to 17 and substitute the following:

“(b) shall provide the relevant person with a full schedule of the records that it holds in relation to the relevant person’s adoption or illegal birth registration.”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 155:

In page 21, between lines 20 and 21, to insert the following:

“(4) Where the information is unavailable, the relevant body shall make every effort to locate the data controller holding the relevant person’s records. ”.

Amendment put and declared lost.

Question, “That section 11 stand part of the Bill”, put and declared carried.

## SECTION 12

**Vice Chairman:** Amendments Nos. 156 to 164, inclusive, are related. Amendment No. 163 is a physical alternative to amendment No. 162. Amendments Nos. 156 to 164, inclusive, may be discussed together by agreement.

**Deputy Mark Ward:** I move amendment No. 156:

In page 21, line 26, after “her” to insert “, records containing”.

This group of amendments relates to a person’s medical information. The amendments are very similar to the group we discussed previously in the context of people’s personal data and people having the fundamental right under EU law to access those data, not merely the information contained in a record. The amendments seek to strengthen the Bill to ensure every effort is made to provide adoptees with their records and not just the information contained within the records, which are two entirely different things.

Apart from the fact that this restriction is in breach of GDPR, there is also a real danger of vital medical information being withheld by not providing a full schedule of records, and instead only providing information that is in the records, to the affected persons. We also consider it inevitable that complaints will be made to the Data Protection Commission.

There is concern that the Bill seeks to set out the information contained in records as opposed to a full schedule of records, as required under GDPR. If a person is not provided with a full schedule of records, he or she will not be able to ascertain what has been held back and this will inhibit the person’s ability to know about records that have been withheld.

Amendment No. 164 seeks to broaden the scope of the data controller and requires that the data controller make every effort to locate, and provide the applicant with, all information relating to him or her.

**Deputy Roderic O’Gorman:** I will deal with amendment No. 164 separately.

My response is the same as that to the previous set of amendments. The Bill provides for copies of records to be supplied to anybody who applies under this legislation. The proposed provision is not necessary because the goal, one that we share, that people get full copies of their records and not just information is already provided for in the Bill.

Amendment No 164 seeks to put an obligation on a body to seek out records that it does not have. If Tusla does not have information about a relevant person when the person applies, this proposed provision would place a statutory obligation on Tusla to look for that information elsewhere. Tusla’s focus needs to be on getting the information it has and providing that to adopted people. Thousands of people will seek that information. To provide a statutory obligation on Tusla to look for information it does not have and which it does not know even exists is incredibly uncertain. To make this a statutory obligation, when there is no certainty that the obligation could ever be fulfilled, is not the best use of Tusla’s resources. For this reason, I cannot accept this group of amendments.

Amendment put and declared lost.

**Deputy Mark Ward:** I move amendment No. 157:

In page 21, between lines 28 and 29, to insert the following:

“(c) incorrect birth registration information.”.

Amendment put and declared lost.

**Deputy Mark Ward:** I move amendment No. 158:

In page 21, between lines 28 and 29, to insert the following:

“(c) any other records on the relevant person’s file.”.

Amendment put and declared lost.

**Deputy Mark Ward:** I move amendment No. 159:

In page 21, between lines 28 and 29, to insert the following:

“(c) the personal data of the relevant person.”.

Amendment put and declared lost.

**Deputy Mark Ward:** I move amendment No. 160:

In page 21, line 31, to delete “, to the extent that it is practicable to do so,”.

Amendment put and declared lost.

**Deputy Mark Ward:** I move amendment No. 161:

In page 21, line 32, after “contain” to insert “the personal data of the relevant person,”.

Amendment put and declared lost.

**Deputy Mark Ward:** I move amendment No. 162:

In page 21, to delete lines 34 to 36.

Amendment put and declared lost.

**Deputy Mark Ward:** I move amendment No. 163:

In page 21, to delete lines 34 to 36 and substitute the following:

“(b) shall provide the relevant person with a full schedule of the records that it holds in relation to the relevant person’s adoption or illegal birth registration.”.

Amendment put and declared lost.

**Deputy Mark Ward:** I move amendment No. 164:

In page 21, after line 39, to insert the following:

“(4) Where the information is unavailable, the relevant body shall make every effort to locate the data controller holding the relevant person’s records.”.

Amendment put and declared lost.

Question, “That section 12 stand part of the Bill”, put and declared carried.

### SECTION 13

**Deputy Kathleen Funchion:** I move amendment No. 165:

In page 22, line 4, to delete “a specified provided item, or”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 166:

In page 22, lines 4 and 5, to delete “and that was provided for the purpose of its being made available to him or her”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 167:

In page 22, between lines 15 and 16, to insert the following:

“(c) where a specified provided item is requested or the applicant believes that provided items exist and the relevant body is not in possession of the provided items, the relevant body shall make every effort to locate the data controller holding the provided item.”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 168:

In page 22, between lines 15 and 16, to insert the following:

“(4) When a relevant person applies under *sections 11* and *12* for information and/or when a relevant person applies for their personal data, the relevant body concerned will make available all provided items to the relevant person regardless of whether they have explicitly requested those items.”.

Amendment put and declared lost.

Section 13 agreed to.

### SECTION 14

**Deputy Kathleen Funchion:** I move amendment No. 169:

In page 22, line 19, to delete “a specified provided item, or”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 170:

In page 22, lines 20 and 21, to delete “, that was provided for the purpose of its being made available to the relevant person and”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 171:

In page 22, between lines 26 and 27, to insert the following:

“(c) where a specified provided item is requested or the applicant believes that provided items exist and the relevant body is not in possession of the provided items, the relevant body shall make every effort to locate the data controller holding the provided item.”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 172:

In page 22, between lines 26 and 27, to insert the following:

“(3) When a relevant person applies under sections 11 and 12 for information and/or when a relevant person applies for their personal data, the relevant body concerned will make available all provided items to the relevant person regardless of whether they have explicitly requested those items.”.

Amendment put and declared lost.

Question, “That section 14 stand part of the Bill”, put and declared carried.

## SECTION 15

**Deputy Kathleen Funchion:** I move amendment No. 173:

In page 22, line 31, to delete “information” and substitute “records”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 174:

In page 22, to delete line 32.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 175:

In page 22, line 35, to delete “information” and substitute “records”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 176:

In page 22, line 39, to delete “information” and substitute “records”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 177:

In page 23, to delete lines 1 and 2.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 178:

In page 23, line 5, to delete “information” and substitute “records”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 179:

In page 23, between lines 9 and 10, to insert the following:

“(6) Where the information is unavailable, the relevant body shall make every effort to locate the data controller holding the relevant person’s records.”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 180:

In page 23, between lines 9 and 10, to insert the following:

“(6) When a relevant person applies under *sections 11 and 12* for information and/or when a relevant person applies for their personal data, the relevant body or the Authority will make available all medical records to the relevant person regardless of whether they have explicitly requested those items.”.

In the context of this amendment, although they are not grouped for discussion, we will withdraw amendment No. 181. The amendment seeks to ensure that all medical records are made available to a relevant person. We feel that the Bill restricts the medical information data provided in respect of information that is relevant to the health of an impacted person, which is subject to change over time. People who have been affected should not have to wait until they are seriously ill before seeking out relevant family medical history.

**Deputy Roderic O’Gorman:** This amendment seeks to give a relevant person his or her medical information even if he or she has not asked for it. When persons apply for information, they can seek birth, care and medical information. There will be a form on which they tick the box on which sort of information they seek. I believe the vast majority of adopted people will seek all information but some may, for whatever reason, decide not to seek certain information. This amendment seeks to force their medical information on them without them having requested it. Giving people agency as to what information they seek is important. In light of that, we will not accept this amendment.

**Deputy Ivana Bacik:** The Minister is right on ensuring agency but that is not the purpose or application of this amendment. As I read it, it is in keeping with the spirit of the recommendation in our pre-legislative scrutiny report. The spirit of those recommendations in general was to ensure adopted persons would be provided with the maximum possible information. Recommendation 14 states:

All information is part of an adopted person’s history and heritage and must be included in the records provided to them, including: information relevant to treatment, including medical records and evidence of possible abuse[.]

The proposer may correct me but I read the amendment as saying that persons who apply should have made available to them all medical records, regardless of whether they have explicitly requested a particular medical record. That is of value because persons seeking medical records may not know, for example, that they had a vaccine test administered to them as children. Unfortunately, that is often the case and I have met individuals for whom that has been an issue. They may not know that and they may not know to request that record. This

amendment seeks to ensure they would get access to particular aspects of medical records they may not have known to apply for.

There may be a better way to draft the amendment to ensure that is its effect. It should not be read as denying agency but as ensuring that a person gets the fullest of information available without needing to apply for specific types of information. I am thinking specifically of vaccine trials.

**Deputy Kathleen Funchion:** It has been explained better by Deputy Bacik but that is what we sought to do with this amendment. The Bill currently uses the words “relevant to the health” of an affected person. In cases where you have a diagnosis of something, you understand what you are looking for, but many people will just want their or their family’s medical history and will not know specifically what they are looking for. The fact that it is restricted to what is “relevant to the health” is our difficulty.

**Deputy Holly Cairns:** The wording of the amendment is to “make available” all records. It does not provide for forcing records on anybody or insist they see them. It sounded like the Minister took it like that. Does he agree that all records should be made available at that time? Is there a better way we could word the amendment in order that he would be agreeable to it?

**Deputy Roderic O’Gorman:** All medical information is already available under the provisions of the Bill. Vaccines are covered either under the medical information category or the early life category. The amendment states “When a relevant person applies under sections 11 and 12 for information”. Section 11 deals with the “Relevant body to provide early life, care information or incorrect birth registration information”. Section 12 again concerns early life or care information. The amendment seeks to ensure that when adopted persons look for early life and care information, they also get medical information, whether they applied for it or not. There is already a right to apply for information in the legislation. That will provide all medical information about the person that is on file. This seeks to tie the release of medical information to other categories of information when the person has not sought it.

**Deputy Holly Cairns:** That is the point of it. I do not think people distinguish medical information from care information in the instance of, for example, an illegal vaccine trial being carried out on him or her while in care. That is what adopted people are calling for. They would see it as part of their early life or care information if they were subject to something like an illegal vaccine trial while in an institution. Making their medical information available when they seek information is the purpose of the amendment.

**Senator Ivana Bacik:** The debate is touching on the important issue of the degree of overlap between different categories of information. For people who were adopted or held in care, we tried to capture in the report that early life and care information encompasses so much about a person’s medical history, from vaccine trials to, for example, abuse, genetic background and circumstances of birth. It may be difficult in practice to distinguish between those categories of information. That is the issue here.

We sought in the report to ensure that people would have access to and be provided with all information about themselves. That is part of respecting and giving effect to a person’s right to identity. It would cover not just names of their birth parents, but also all the other early life and care information. The Minister is also trying to capture it in that definition but the amendment seeks to ensure that all that information is covered and the person is not inadvertently blocked from receiving particular information because he or she thinks it is in one category when, as the Minister said, it could be covered under early life and care information rather than medical

information.

**Deputy Roderic O’Gorman:** Section 15 covers the release of medical information. It is clear that it covers all elements of such information. When we undertake the information campaign about what material people can apply for under this legislation and particularly when we provide the documentation for people to make an application, we can make it clear what is set out under the categories. We will make it clear what medical information is. Where adopted people wish to get their medical information they will be able to see it. We will make it simple so that people can tick the boxes for medical information, birth certificate, birth information and care information.

There may be circumstances in which people do not wish to get all their information. This amendment ties medical information to release of other categories of information so that people do not have a choice. We should give adopted people the choice of what sort of information they apply for. In the vast majority of situations, adopted people will apply for all the categories of information but it is their decision and we should not tie the release of one sort of information to another, if it is not what they seek.

**Senator Ivana Bacik:** This debate goes to the heart of what the Bill is about and is very important. The information campaign and the guidelines may well clarify the issues but in the section 2 definitions of “early life information” and “medical information” there is a clear overlap. It will be important, as we said in pre-legislative scrutiny, for adopted persons seeking to access records on early life information and medical information that the guidelines are accessible and that everyone seeking to apply for information would be clear on what was meant by early life information as distinct from medical information.

Early life information clearly covers medical information. The definition in section 2 includes “information on any medical treatments, procedures or vaccinations”. As the Minister said, that would cover vaccine trials and information relating to his or her medical history. There is an overlap and medical information is included in early life information. It will be important that the information campaign and the guidelines make clear what is covered in each category and what people are applying for. There should be a box which somebody could simply tick for all of the information.

**Deputy Holly Cairns:** Any information.

**Senator Ivana Bacik:** Yes, all and any. It is so people are not inadvertently blocked from receiving specific information that they would have wanted had they realised what it was. That is the important point.

**Deputy Holly Cairns:** Particularly when the amendment says “make available” to the person.

**Deputy Roderic O’Gorman:** In terms of the design, I agree. My understanding from the initial work the team has done is that there is an all information box that can be achieved there. The Deputy is correct that there is overlap in the definitions. Throughout all our discussions here I have said that we have designed the definitions expansively. We are keeping them wide so we can take in as much information as possible in order that adopted people are entitled to as much information as possible. We designed them to be wide on purpose, and I believe that is positive.

Amendment put.

The Committee divided: Tá;, 4; Níl, 5.	
Tá;	Níl;
Bacik, Ivana.	Costello, Patrick.
Cairns, Holly.	Crowe, Cathal.
Funchion, Kathleen.	Dillon, Alan.
Ward, Mark.	O’Gorman, Roderic.
	Phelan, John Paul.

Amendment declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 181:

In page 23, to delete lines 10 to 14.

Amendment, by leave, withdrawn.

Question, “That section 15 stand part of the Bill”, put and declared carried.

#### SECTION 16

**Vice Chairman:** Amendments Nos. 182 to 188, inclusive, and amendment No. 198, are related and may be discussed together. Is that agreed? Agreed.

**Deputy Mark Ward:** I move amendment No. 182:

In page 23, to delete line 22.

Amendments Nos. 182, 185 and 187 concern the provision that only information relevant to the health of the adopted person will be released. Information that is relevant to a person’s health is subject to change over time. The affected person should not have to wait until he or she is seriously ill before seeking out relevant family medical history. Amendment No. 198 is similar.

Amendments Nos. 183 and 184 propose to delete the wording “to which the application relates only” from the information that should be provided to affected people. We believe this represents a restriction on the information provided. For example, if someone has cancer and as a result applies for a family medical history, according to the Bill only medical information relating to cancer will be given. What if information relating to heart disease or another medical condition is available on the file? This is particularly relevant for hereditary conditions that an adopted person may have, and would not know to ask for.

Amendment No. 186 proposes to delete the requirement for the information to be provided to a medical practitioner. The Department’s data protection impact assessment states that this measure is necessary in order to mitigate the risks of a genetic relative being identified. Any identifying information, however, will have already been removed, so the requirement to release the information to a medical practitioner is completely unnecessary and an unnecessary breach of the affected person’s privacy.

Amendment No. 188 seeks to give children under the age of 16 the right to their medical information through an application made by their adoptive parents.

**Deputy Roderic O’Gorman:** This section is one of the most significant elements of the Bill. It speaks to one of the key issues raised by adopted people, namely, that they are denied information about their medical history that could be relevant to their health and that this occurs because they do not know who their parents are and they do not know their family medical history. It is very important to remember what we are providing for here. We are providing for a person to have a legal right to somebody else’s medical information, which is the medical information of a third party. In the discussions on this, we all understand that the equivalence is drawn by saying we would know if our mothers had heart disease, a hereditary cancer or something like that. In most cases, that would be the case but none of us here has a legal right to our mother’s or father’s medical information. If a parent chose to withhold something from us for whatever reason, bizarre as that may seem, he or she has a right to do so.

We are providing for an adopted person to have a legal right to the medical information of somebody else. That limits the privacy rights of the other person. If we are to allow that interference with another person’s privacy rights, some protections must be provided. The protections are that the information being given to the adopted person about his or her parent is relevant to the adopted person’s health. Let us be very clear, “relevant” is not limited to a question about one illness or disease. “Relevant” means it is relevant to the person’s health. Any genetic or hereditary condition that is on file about the parent falls within the definition of relevant and would be conveyed to the adopted person.

The second protection, which we will also cover later, is that this information is not conveyed directly to the adopted person but it would be conveyed to a medical practitioner in order that there will be an intermediary in the provision of such information. This is not the case when we are talking about the adopted person’s own medical records, for which full release is provided, as we discussed earlier.

This provision is a dramatic but necessary interference with the privacy rights of the parents in these circumstances. When the medical information of the parents is shared with somebody else without consent or permission being given, there must be protections around that. We have engaged significantly with the Office of the Attorney General and the Data Protection Commission, and we have also spoken to mothers. The mothers who spoke to the committee raised their concerns about their medical information being released.

The protections provided are that the information conveyed must be relevant to the adopted person’s health, with the word “relevant” being interpreted broadly, and that the process will involve the information being given to the adopted person’s medical practitioner. I believe these two safeguards are necessary and will allow for the limitation of the privacy rights of the parent. This is what we have been advised legally from a data protection position. It also reflects the concerns about this particular point raised by the mothers who appeared before the committee.

I am not able to accept these amendments. To do so would put at risk the entire goal we are trying to achieve, namely, to enable adopted persons to get health information that is relevant to them.

**Deputy Mark Ward:** As the Minister said, the term “relevant” is always open to interpretation. Things could fall through the gaps in that interpretation. The Minister did not respond on amendment No. 188, which seeks to give children under the age of 16 the right to their medical information through an application made by their adoptive parents.

**Deputy Roderic O’Gorman:** On the definition of “relevant”, the Minister for Children,

Equality, Disability, Integration and Youth has the power to draft guidelines on the definition. I have spoken about that power previously with regard to securing and ensuring the interpretation given by the bodies applying these provisions is as broad a definition as possible and moving all of these bodies into a culture of releasing the broadest amount of information. The Deputy asked a second question.

**Deputy Mark Ward:** I asked about amendment No. 188, which seeks to give children under the age of 16 the right to seek their medical information through an application by their adoptive parents.

**Deputy Roderic O’Gorman:** Children aged under 16 are not directly covered by the Bill. This issue was raised by the Office of the Ombudsman for Children. We have stated that we will, in future, consider the position of children under the age of 16. We have made provision for children aged 16 and 17 to gain access to their information but the Ombudsman for Children is of the view that the younger the child, the wider the supports that will need to be made available. It is for that reason that children aged under 16 are not addressed in the context of this legislation.

Amendment put and declared lost.

**Deputy Mark Ward:** I move amendment No. 183:

In page 23, line 25, to delete “to which the application relates only”.

Amendment put and declared lost.

**Deputy Mark Ward:** I move amendment No. 184:

In page 23, line 25, to delete “to which the application relates only” and substitute “without delay.”.

Amendment put and declared lost.

**Deputy Mark Ward:** I move amendment No. 185:

In page 23, to delete lines 26 to 28.

Amendment put and declared lost.

**Deputy Mark Ward:** I move amendment No. 186:

In page 23, to delete lines 29 to 31.

Amendment put and declared lost.

**Deputy Mark Ward:** I move amendment No. 187:

In page 23, to delete line 38.

Amendment put and declared lost.

**Deputy Mark Ward:** I move amendment No. 188:

In page 23, after line 38, to insert the following:

“(4) The adoptive parent of a child who has not attained the age of 16 years may apply in writing to the Authority for the provision by it to him or her of medical information that—

(a) is contained in a record to which this section applies that is held by the Authority or by the Agency,

(b) relates to his or her genetic relative.”.

Amendment, by leave, withdrawn.

**Chairman:** Amendments Nos. 189 to 192, inclusive, are related and may be discussed together.

**Deputy Kathleen Funchion:** I move amendment No. 189:

In page 24, line 2, to delete “to which the application relates only”.

This is similar to what we were discussing, so I do not wish to be repetitive. One of the key things in this regard, however, is what people might interpret as information “relevant to health”. As Deputy Ward said, when I read this provision I see it as potentially restrictive. The Minister, though, has said that he sees this as referring to the health of the person concerned and that he or she should be able to access all of his or her information. Since the subject access request forms have been available, I have found that my constituents seeking information have achieved a good level of success with them. I have encountered one or two cases, however, and I have contacted Ms McGarrigle a few times in this regard, where people have received documents where everything has been redacted. I have come across people who had been looking for records for 40 years and got them and it was fantastic and great that they were able to get that information. I have also met people, however, who were left much more frustrated when they got ten or 12 pages of information, but where only three or four lines were intelligible because so much was redacted. In those cases, people tend to ponder what information exists about them because they wonder why so many pages have such little information.

I gave that example to show what can happen when something is potentially left open to interpretation and how one group of officials can respond to a request by deciding to agree to give all the information, while others can refuse and decide they do not believe the person making the request is entitled to the information being sought. That is why we are so focused on the language of “relevant to the health” of a relevant or qualifying person and this is important. It reads to me and others as if information may only be relevant if people know what they are looking for. I refer to a situation where a person might potentially have a diagnosis of cancer or could be going for a battery of tests, but is not yet 100% sure of the prognosis. It is for that reason that we are so focused on this aspect of the legislation.

The Minister might say something different about this phrasing, but I think it is still open to interpretation. I do not want to go over everything we have said again, but this is why, similar to what Deputy Bacik said earlier, we believe the provision of information should not be restricted to it being “relevant to the health” of a relevant or qualifying person. It is, unfortunately, open to interpretation and it would be possible to have very willing and accommodating officials, but, equally, other officials who might think very differently. That is why we believe this is the opportunity to ensure that the legislation is strengthened in that regard. If the Minister is of the same belief, I do not see why he could not accept some of the amendments in this grouping.

**Deputy Roderic O’Gorman:** As I read them, what this group of amendments is seeking to do is to remove the requirement to provide the relevant medical information to the relevant medical practitioner, who will then provide it to the relevant person. I see that as what this set of amendments aims to do.

Turning to the Deputy’s point concerning consistency in this context, she is right that it is vital and that is why there is the ability to publish guidelines under this legislation and for those guidelines to be revised if elements of inconsistency are seen to be creeping into the application of the legislation. This aspect is fundamentally important. A later set of amendments seeks to limit the power to issue guidelines and I will be opposing those as well. Guidelines are the manner in which we can see the achievement of the required consistency.

This set of amendments is concerned with deleting the second level of protection in respect of interference with the privacy rights of a parent. The first level of protection is the provision that the information requested is relevant information about the adopted person’s health and the second level protection is that the information is conveyed to the medical practitioner. We have been advised that these are the necessary measures to balance the significant interference in the privacy rights of the parent. It is worth repeating that we are giving the adopted person a legal right to access the medical information of another person, without that other person’s consent. It is a big step. It must be taken, but it is a big step and some level of protection must be put in place. This aspect of the legislation is one of those protections and therefore I cannot accept amendments seeking to delete it.

**Deputy Kathleen Funchion:** All these amendments follow on in a similar vein. It is part of the difficulty when amendments are grouped and we are limited to just discussing those in the group. This group, though, is very much linked to the previous group, namely, amendments Nos. 182 to 188, inclusive.

Regarding the proposed guidelines, because this topic has come up a good bit in recent meetings, I request that we be able to have a look at those guidelines before Report Stage, if that is possible. It would mean that we could know exactly what is in them and, as the Minister said, perhaps some of our concerns might be addressed in them. It would be useful and helpful to us if we could be provided with a copy of those proposed guidelines before Report Stage.

**Deputy Roderic O’Gorman:** I want to get these guidelines published as quickly as possible, but I am not sure if it will be possible to have them ready in their entirety before Report Stage. The team has been focused on addressing the significant body of work in front of the committee now. We can look perhaps at getting some draft heads of the guidelines for the committee, or something like that. We will do our best for the committee in that regard, but a significant body of work is ongoing in this context and we were going to use the three-month period of the information campaign to finalise the guidelines. We will, however, seek to get a draft copy of the guidelines to the committee to give some indication of the level of detail we are seeking to implement in them and, hopefully, that will provide some element of reassurance.

**Deputy Ivana Bacik:** I welcome that comment from the Minister. We are all conscious that a significant workload is involved in doing that, but, at the same time, the issues we have been debating in many of these amendments could well be addressed through the guidelines. Therefore, it would be of great assistance to us and, more importantly, to those who are concerned to see this legislation enacted for their own use and application. It would be of great benefit to have even some idea of what the guidelines will include.

**Deputy Roderic O’Gorman:** Guidelines cannot be officially published until the legislation is enacted. As I said, however, we will endeavour to get drafts of the guidelines to the committee. It must be recognised, though, that those will only be drafts of the guidelines and that they will be subject to change, but we can listen to the views of the committee in that regard as well. To reiterate, what we will be providing will be the heads of the proposed guidelines rather than the detailed information.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 190:

In page 24, line 2, to delete “to which the application relates only” and substitute “without delay”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 191:

In page 24, to delete lines 3 to 5.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 192:

In page 24, to delete lines 6 to 8.

Amendment put and declared lost.

**Chairman:** Amendments Nos. 193 and 194 are related and will be discussed together.

**Deputy Kathleen Funchion:** I move amendment No. 193:

In page 24, between lines 15 and 16, to insert the following:

“(6) The Minister shall issue guidelines to ensure that all medical information relating to a genetic relative is identified in the records held by the relevant body.”.

We are happy to take the two amendments as read because they are very similar to the previous ones, rather than going over the same issue again. Perhaps the Minister wants to refer to them anyway.

**Deputy Roderic O’Gorman:** These deal specifically with guidelines. I have given a commitment to try to make available draft heads of guidelines to Deputies in advance of Report Stage.

**Deputy Kathleen Funchion:** I propose to withdraw the amendment on the grounds that it may be resubmitted for Report Stage.

Amendment, by leave, withdrawn.

**Deputy Kathleen Funchion:** I move amendment No. 194:

In page 24, to delete lines 16 to 18.

Amendment, by leave, withdrawn.

**Deputy Kathleen Funchion:** I move amendment No. 195:

In page 24, line 20, after “conditions” to insert “and persons with expertise in reading archival documents”.

This seeks to strengthen our belief that any authorised data controller should have the expertise required to implement adoption legislation and policy and ensure adoption records are secured, maintained and interpreted correctly and held to the highest standard of ethical scrutiny.

**Deputy Roderic O’Gorman:** The drafting of the ministerial guidelines and release of medical information on a genetic relative is provided for under the section. Section 16(7) states the Minister may consult such persons as he or she considers appropriate. In the context of the release of medical information, consultation with medical experts would involve the person most relevant, including in the sense of having expertise in hereditary medical conditions. That provision does not restrict the Minister in deciding who to consult regarding drafting the guidelines and, therefore, the amendment is not necessary. Section 16(7) already gives the Minister the power to consult widely in drafting the guidelines.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 196:

In page 24, between lines 24 and 25, to insert the following:

“(9) Where the medical information is unavailable, the relevant body shall make every effort to locate the data controller holding the relevant person’s records.”.

Amendment put and declared lost.

**Chairman:** Amendment No. 197 was ruled out of order in accordance with Standing Order 212(3) as it has the potential to impose a charge on the Revenue.

Amendment No. 197 not moved.

**Deputy Kathleen Funchion:** I move amendment No. 198:

In page 24, to delete lines 25 to 32.

Amendment put and declared lost.

Section 16 agreed to.

## NEW SECTION

**Deputy Ivana Bacik:** I move amendment No. 199:

In page 24, between lines 33 and 34, to insert the following:

### “Information relating to contact preference

17. In every case where an applicant is provided under this Act with a copy of the records that contain the birth information to which the application relates, or with a statement setting out the birth information contained in those records, the Authority shall send to the applicant, by prepaid registered post or other recorded delivery, a statement by the Authority setting out, in so far as it has established in relation to each relevant

parent, whether—

- (a) he or she has not made a statement under section 38(11),
- (b) he or she has made a statement under section 38(11) that either of the following applies:
  - (i) he or she is seeking to have contact with the applicant;
  - (ii) he or she is willing to be contacted by the applicant,
- (c) he or she has made a statement under section 38(11) that he or she is not willing to be contacted by the applicant,
- (d) he or she is deceased,
- (e) he or she is not willing to be contacted by the applicant.”.

Amendment put.

The Committee divided: Tá;, 4; Níl, 6.	
Tá;	Níl;
Bacik, Ivana.	Costello, Patrick.
Cairns, Holly.	Crowe, Cathal.
Funchion, Kathleen.	Dillon, Alan.
Ward, Mark.	Murnane O'Connor, Jennifer.
	O'Gorman, Roderic.
	Phelan, John Paul.

Amendment declared lost.

## SECTION 17

**Deputy Roderic O’Gorman:** I move amendment No. 200:

In page 25, to delete line 6 and substitute “be, and”.

Amendment agreed to.

**Deputy Roderic O’Gorman:** I move amendment No. 201:

In page 25, to delete lines 7 to 10 and substitute the following:

“(b) the fact that—

- (i) the parent concerned has exercised his or her entitlement under *section 38(11)* to state that he or she is not willing to be contacted by the relevant person, and
- (ii) the making of that statement by the parent constitutes an exercise by him or her of his or her right to privacy.”.

Amendment agreed to.

Question, “That section 17, as amended, stand part of the Bill”, put and declared carried.

## SECTION 18

**Vice Chairman:** Amendments Nos. 202 to 204, inclusive, are related and shall be discussed together.

**Deputy Mark Ward:** I move amendment No. 202:

In page 25, line 28, after “years,” to insert “where requested by the relevant person,”.

This group of amendments concerns the information meeting for adopted people under the age of 18. The Bill provides for an information meeting with adopted people aged between 16 and 18 years who have applied for their information. Our position is that this meeting must only be provided if requested by the adopted person in question. It must be provided by a service of the adopted person’s choosing. It should not be conducted by a social worker and the person holding the meeting should not attempt to influence the adopted person in any way. If the adopted person requests emotional or psychological support, it should be provided by a service of his or her choosing, as we have set out for section 18.

**Deputy Roderic O’Gorman:** We made a decision when bringing forward this legislation that we did not want to define just for those people aged 18 and above and we wanted to recognise that younger people who were adopted also have an interest in their birth and early life information. We wanted to make provision for that. Issues are different when we are not dealing with adults and we engaged quite significantly. In particular, we consulted with the Ombudsman for Children to ensure the appropriate provisions were put into the Bill and the section we are discussing here has been developed in consultation with the children’s ombudsman. The Ombudsman for Children has confirmed that the supportive meeting we are proposing in this Bill that allows for the release of information for those who are aged 16 and 17 is a necessary protection for younger people.

Under section 18 of the Bill, a person aged 16 or 17 seeking identity information will have that information released through a supportive meeting with the help of a suitably qualified person. In addition, the applicant - the adopted person seeking the information - may be accompanied by a person of his or her choosing. The meeting can take place in person or virtually as preferred. This mechanism is designed to ensure there is an additional layer of support available to younger applicants and those who are not adults at the point of receiving and assimilating the information. Given the clear opinion of the Ombudsman for Children on the provision, I will not accept an amendment that seeks to remove such a meeting.

Amendment No. 204 suggests that nobody in the meeting should try to influence the relevant person in any way with respect to his or her view on the adoption. This language is very imprecise and it is unclear what constitutes influence. It is defined in such a way that virtually any interaction between the younger person and the suitably qualified person could be construed as influence. Again, matters relating to the conduct of these meetings can be dealt with through guidance and guidelines rather than through statutory provision.

A second element of amendment No. 204 requires that a person facilitating a supportive meeting should provide details of emotional or psychological supports upon request. Again, that provision of support to relevant persons is already provided for under section 57 of the Bill. We do not feel it necessary to repeat it.

Amendment put and declared lost.

SCEDIY

**Deputy Mark Ward:** I move amendment No. 203:

In page 25, between lines 31 and 32, to insert the following:

“(2) Where the relevant person does not wish to have a meeting the records and provided items shall be provided to the relevant person via post or electronically.”

Amendment put and declared lost.

**Deputy Mark Ward:** I move amendment No. 204:

In page 25, between lines 31 and 32, to insert the following:

“(2) During the meeting referred to in *subsection (1)(a)*, the designated person shall not try to influence the relevant person in any way in relation to the relevant person’s views on their adoption. If a relevant person requests emotional or psychological support, the designated person shall provide the relevant person with the details.”.

Amendment put and declared lost.

Section 18 agreed to.

**Vice Chairman:** Amendment No. 205 has been ruled out of order under Standing Order 212(3) due to the potential to impose a charge on the Revenue.

Amendment No. 205 not moved.

SECTION 19

**Deputy Kathleen Funchion:** I move amendment No. 206:

In page 26, line 5, after “Minister” to insert “, in consultation with the Adoption Advisory Group,”

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 207:

In page 26, line 14, to delete “Subject to” and substitute “In consultation with the Adoption Advisory Group and subject to”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 208:

In page 26, line 20, to delete “*section 17* or”.

Amendment put and declared lost.

Section 19 agreed to.

SECTION 20

**Vice Chairman:** Amendments Nos. 209 and 210 are related and will be discussed together.

**Deputy Kathleen Funchion:** I move amendment No. 209:

In page 26, line 33, after “father” to insert “or grandmother or grandfather, or great-grandmother or great-grandfather”.

Amendment, by leave, withdrawn.

**Deputy Kathleen Funchion:** I move amendment No. 210:

In page 26, line 34, after “father” to insert the following:

“or adoptive grandmother or adoptive grandfather, or adoptive great-grandmother or adoptive great-grandfather ”.

Amendment, by leave, withdrawn.

Section 20 agreed to.

## SECTION 21

**Deputy Kathleen Funchion:** I move amendment No. 211:

In page 27, lines 4 and 5, to delete “birth information that is” and substitute “records that are”.

This amendment changes the language and seeks to ensure that all records, not just birth information, held by a relevant body is given over to a qualifying person.

**Deputy Roderic O’Gorman:** This legislation already makes it clear that copies of relevant records will be provided in all circumstances and this is already provided for in the Bill. As such, this amendment is not necessary.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 212:

In page 27, line 5, to delete “relates” and substitute “relate”.

Amendment, by leave, withdrawn.

**Deputy Kathleen Funchion:** I move amendment No. 213:

In page 27, lines 10 and 11, to delete “that it holds that contain the birth information to which the application relates”.

This amendment is very similar to amendment No. 211. It changes the language and seeks to ensure that all records, not just birth information, held by a relevant body is given over to a qualifying person. We have made that point on a number of occasions.

**Deputy Roderic O’Gorman:** The existing provisions of the Bill allow for the release of records and emphasise that copies of the records will be released in all situations.

Amendment put and declared lost.

**Vice Chairman:** Amendments Nos. 214 to 218, inclusive, are related and will be discussed together.

**Deputy Mark Ward:** Those amendments can be taken as read.

**Deputy Kathleen Funchion:** When the amendments come out and are grouped, there is considerable repetition. We will try to help the process by taking some of them as read. We will still move them.

**Deputy Mark Ward:** We will still move them but they can be taken as read.

**Vice Chairman:** That is fine.

**Deputy Kathleen Funchion:** I move amendment No. 214:

In page 27, to delete lines 12 and 13.

The Minister may want to respond.

**Vice Chairman:** Does the Minister want to respond?

**Deputy Roderic O’Gorman:** No. I have responded to similar amendments already.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 215:

In page 27, between lines 13 and 14, to insert the following:

“(c) shall provide the applicant with a full schedule of the records that it holds in relation to the relevant parent.”

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 216:

In page 27, to delete lines 16 and 17.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 217:

In page 27, to delete line 23 and substitute the following:

“(c) the personal data of the relevant parent.”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 218:

In page 27, line 23, after “prescribe” to insert “, in consultation with the Adoption Advisory Group”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 219:

In page 27, between lines 23 and 24, to insert the following:

“(5) Where the records are unavailable, the relevant body shall make every effort to locate the data controller holding the relevant parent’s records.”.

Amendment put and declared lost.

Section 21 agreed to.

## SECTION 22

**Vice Chairman:** Amendments Nos. 220 to 225, inclusive, are related and will be discussed together.

**Deputy Kathleen Funchion:** I move amendment No. 220:

In page 27, between lines 35 and 36, to insert the following:

“(d) the personal data of the relevant parent.”.

These amendments are similar. We are getting into a repetition situation. The amendments seek to expand the scope of what information is available to an applicant. It is clear we are on at opposing sides on this. I do not want to constantly go over the same point. Basically, all information that is there should be available to people.

**Deputy Roderic O’Gorman:** I agree with Deputy Funchion on that. The Bill already provides that all information that is there will be made available to a relevant person who seeks it.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 221:

In page 28, line 1, to delete “, to the extent that it is practicable to do so,”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 222:

In page 28, line 2, after “contain” to insert “the personal data of the relevant parent,”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 223:

In page 28, to delete lines 4 to 6.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 224:

In page 28, between lines 6 and 7, to insert the following:

“(c) shall provide the applicant with a full schedule of the records that it holds in relation to the relevant parent.”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 225:

In page 28, to delete lines 9 and 10.

Amendment put and declared lost.

Section 22 agreed to.

SECTION 23

**Deputy Kathleen Funchion:** I move amendment No. 226:

In page 28, line 16, to delete “a specified provided item, or”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 227:

In page 28, between lines 18 and 19, to insert the following:

“(2) Where a specified provided item is requested or the applicant believes that provided items exist and the relevant body is not in possession of the provided items, the relevant body shall make every effort to locate the data controller holding the provided item.”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 228:

In page 28, to delete lines 27 and 28.

Amendment put and declared lost.

Section 23 agreed to.

SECTION 24

**Vice Chairman:** Amendments Nos. 229 to 237, inclusive, and amendments Nos. 239 to 241, inclusive, are related. Amendments Nos. 240 and 241 are physical alternatives to amendment No. 239. Amendments Nos. 229 to 237, inclusive, and amendments Nos. 239 to 241, inclusive, may be discussed together.

**Deputy Mark Ward:** I move amendment No. 229:

In page 28, to delete line 36.

I will speak to amendments Nos. 229 to 231 first. This group of amendments removes the phrase “to which the application relates only” from the information that should be provided to relatives of deceased adopted people as this represents a restriction on the information provided. For example, if a relative of a deceased adopted person has cancer and as a result had applied for a family medical history, according to the Bill only medical information relating to cancer will be given. What if information in relating to heart disease or another medical condition is available on the file? I believe I have discussed this already with the Minister and I am repeating myself.

Amendments Nos. 232 to 234, inclusive, concern the provision that only information that is relevant to the health of the relevant person will be released. Amendment No. 233 removes the requirement for the information to be provided to the medical practitioner. The Department’s data protection impact assessment states that this measure is necessary in order to mitigate the risks of a genetic relative being identified. However, as any identifying information will already have been removed, the requirement to release the information to a medical practitioner is completely unnecessary.

Amendment No. 235 ensures the location of all medical information that is available on file.

Amendment No. 236 ensures that a person with expertise in reading documents is involved in the process.

Amendments Nos. 240 and 241 widen the definition of a record by including that which relates to any relevant person and in section 2 the Bill defines a relevant person as someone who may apply to Tusla for information. These two amendments further strengthen the Bill's ability to ensure that records, data and information are not withheld by any means.

**Deputy Roderic O’Gorman:** This section refers to another significant improvement of the legislation between the initial heads of the Bill and the final draft following the pre-legislative scrutiny, PLS, process, which is to provide a relevant person who is an adopted person with medical information about a deceased relative.

Again this is important information and where it is available it should be provided but with a relative who is still living, some protections still have to be placed on the release of that medical information because it is personal information. Again, this section was designed in consultation with both the Office of the Attorney General and the Data Protection Commissioner. That is important in the context of making provision for what we want to achieve here, which is the release of information. We get the release of this information but it is conditional on the medical history being relevant to the applicant's own medical history. We have discussed earlier on the definition of relevance and how relevance can be expanded upon in guidelines, but it is relevant to hereditary conditions and not relevant to one specific illness or disease.

Second, this information will be conveyed through the relevant person's GP and that is again a necessary protection put in to recognise the sensitivity of providing a person with somebody else's medical information. I am not in a position to accept this set of amendments.

**Deputy Mark Ward:** I made this point when we discussed this issue earlier. Without getting caught up in semantics, we know without doubt who the relevant person is. It is the applicant who is looking for this information. I repeat the point that we still do not know what is deemed relevant to the health of that person. I hope the guidelines and all of the other matters that are laid out will make that a great deal clearer. I thank the Minister.

**Vice Chairman:** How stands amendment No. 229?

**Deputy Mark Ward:** I am pressing it.

Amendment put and declared lost.

**Deputy Mark Ward:** I move amendment No. 230:

In page 29, line 3, to delete “to which the application relates only”.

Amendment put and declared lost.

**Deputy Mark Ward:** I move amendment No. 231:

In page 29, line 3, to delete “to which the application relates only” and substitute “without delay”.

Amendment put and declared lost.

**Deputy Mark Ward:** I move amendment No. 232:

In page 29, to delete lines 4 to 6.

Amendment put and declared lost.

**Deputy Mark Ward:** I move amendment No. 233:

In page 29, to delete lines 7 to 9.

Amendment put and declared lost.

**Deputy Mark Ward:** I move amendment No. 234:

In page 29, to delete lines 17 to 19.

Amendment put and declared lost.

**Deputy Mark Ward:** I move amendment No. 235:

In page 29, between lines 19 and 20, to insert the following:

“(5) The Minister shall issue guidelines to ensure that all medical information relating to a genetic relative is identified in the records held by the relevant body.”.

Amendment put and declared lost.

**Deputy Mark Ward:** I move amendment No. 236:

In page 29, line 21, after “conditions” to insert “and persons with expertise in reading archival documents”.

Amendment put and declared lost.

**Deputy Mark Ward:** I move amendment No. 237:

In page 29, to delete lines 26 to 34.

Amendment put and declared lost.

**Vice Chairman:** Amendment No. 238 has been ruled out of order in accordance with Standing Order 212(3) as it has a potential to impose a charge on the Revenue.

Amendment No. 238 not moved.

Amendment No. 239 not moved.

**Deputy Mark Ward:** I move amendment No. 240:

In page 29, between lines 35 and 36 to insert following:

“(a) relating to a relevant person,”.

Amendment put and declared lost.

**Deputy Mark Ward:** I move amendment No. 241:

In page 29, to delete lines 36 to 39.

Amendment put and declared lost.

Section 24 agreed to.

## SECTION 25

**Deputy Mark Ward:** I move amendment No. 242:

In page 30, line 2, after “Minister” to insert “, in consultation with the Adoption Advisory Group,”.

Amendment put and declared lost.

Section 25 agreed to.

## SECTION 26

**Deputy Mark Ward:** I move amendment No. 243:

In page 30, to delete line 16 and substitute the following:

“(ii) died while he or she was resident in an institution or other arrangement prior to being adopted, boarded out or nursed out;”.

Amendment put and declared lost.

**Deputy Mark Ward:** I move amendment No. 244:

In page 30, between lines 22 and 23, to insert the following:

“(b) his or her grandmother or grandfather;”.

Amendment put and declared lost.

Section 26 agreed to.

## SECTION 27

**Vice Chairman:** Amendments Nos. 245 to 251, inclusive, are related and will be discussed together.

**Deputy Holly Cairns:** I move amendment No. 245:

In page 30, line 33, to delete “that is” and substitute “and all other records that are”.

Amendments Nos. 245 and 246 concern improving the definition of information that relevant bodies must provide to applicants. This originates in the understandable distrust adopted people and survivors have for State bodies. They are seeking the assurance of as broad a definition as possible to prevent the lack of access they have been presented with for decades. These amendments seek to insert such broader definitions.

Amendment No. 247 seeks to remove the entirely inappropriate and ambiguous term “to the extent that it is practicable to do so”. We must call that phrase out as a get-out clause. It is a worrying element of the Bill, which does not provide unfettered access, as everybody keeps claiming it does. It is a barrier, plain and simple. At a previous meeting, the Minister assured

us that all of this Bill was carefully fine-tuned in accordance with engagement with the Office of the Parliamentary Counsel and the Office of the Attorney General, which was integral to the Bill. The phrase “to the extent that it is practicable to do so” is far from finely tuned and it is important to point that out. I hope I am wrong but there is no doubt in my mind that such a phrase in the legislation will be used as an obstacle for people using their personal information.

Amendments Nos. 248 and 249 seek to remove another restrictive aspect of the Bill. The amendments remove the option for the relevant body to provide what is essentially a summary or list of information and insist on the provision of the full range of records held about the applicant. If this Bill is about enabling full and complete access, this is another section that needs changing.

Similarly, amendments Nos. 250 and 251 remove the relational statement “a record of such class as the Minister may prescribe” and replace it to provide for absolute statements that allow full access to records and personal data.

**Deputy Roderic O’Gorman:** This group of amendments relates to section 27 under Part 4. That section provides for the release of the birth information of a child who died in an institution to a qualifying relative. This speaks again to an issue that came up during the pre-legislative scrutiny process about information relating to children who died in institutions. That was not provided for under the original draft that was recommended in the pre-legislative scrutiny and we are providing for that now.

Section 27 relates to birth information about children who died. The amendment seeks to expand the definition of “birth information” to include the other categories but it is important to remember that those other categories are all covered by the next set of sections. Sections 27 to 30, inclusive, provide for the release of birth information, early life information and care information, the successive types of information about children who died in institutions. The type of information the amendment is seeking to insert into the section is addressed in subsequent sections and, therefore, we do not feel it needs to be repeated by including particular definitions in this section.

Amendments Nos. 248 and 249 relate to issues we have addressed previously. We are looking for a statement to be released along with the documents explaining the documents as they are released. The alternative that has been proposed in a number of places is the idea of a schedule. We believe that the statement, which is not just a list, like a schedule, but actually gives some context to the documents being proposed, is a better way forward. That is why on each occasion the issue comes up, we believe the provision of a statement alongside the release of documents is better than the provision of a schedule.

The Deputy raised concern about the use of the term “to the extent that it is practicable to do so”. That is a term of art in legislation. It is intended to convey an obligation to provide copies of all records unless there is some significant obstacle to the provision of those particular records. An example would be where an original record is lost. We know there are situations where information will not be with Tusla or the AAI and that is going to be a difficulty when it comes to certain adopted people for whom there will be no information to provide them with because of historical circumstances.

I will give the Deputy another example of the use of the term “to the extent that it is practicable to do so”. During the pandemic, electronic records were easily provided to people but hard copy records were not as accessible because people were not attending to collect them.

The SARs we have been issuing from our Department have meant the release of the electronic document which, for the commission's archive, is the vast majority of the information. However, in answer to each SAR, the Department has stated it will also undertake a search of any physical documents that are in the commission archive. It is in such a situation that "to the extent that it is practicable to do so" is used. The core goal and intent behind this legislation is for the full release of information.

**Deputy Holly Cairns:** The Minister said the information around relevant bodies is covered in a subsequent section and that is great, if I take him at his word. Why not just strengthen the point in this section if he is already on board, along with the rest of us, on this point? We can add it to this section, given the unique circumstances we are in when considering this legislation. For four decades, people have been refused access to their information by these State bodies and, therefore, there is an understandable level of distrust. That is what we are dealing with and that is why all these amendments have been tabled. People understandably do not believe they are going to be given this information because they have been wrongly denied it for so long. Instead of always trying to discredit the amendments we have tabled because people have come to us in good faith and asked us to table them, can the Minister not strengthen the legislation to assure them that they will be provided with the information we are seeking to ensure is available through this amendment? If it is already in another section why not strengthen it in this section too?

**Deputy Roderic O'Gorman:** I absolutely do not accept the Deputy's suggestion that I am trying to discredit anyone. Where a right to information is provided in the next section I do not see a need to provide the same right in two separate sections. I do not see any necessity or any legal purpose in doing that.

**Deputy Holly Cairns:** To be fair, it would not be the first time there would be repetition in a Bill to strengthen a point.

Amendment put and declared lost.

**Deputy Holly Cairns:** I move amendment No. 246:

In page 30, line 35, after "information" to insert "and other records"

Amendment put and declared lost.

**Deputy Holly Cairns:** I move amendment 247:

In page 31, line 1, to delete "to the extent that it is practicable to do so,".

Amendment put and declared lost.

**Deputy Holly Cairns:** I move amendment No. 248:

In page 31, to delete lines 4 and 5.

Amendment put and declared lost.

**Deputy Holly Cairns:** I move amendment No. 249:

In page 31, between lines 5 and 6, to insert the following:

"(c) shall provide the applicant with a full schedule of the records that it holds in

relation to the relevant person's adoption or illegal birth registration.”.

Amendment put and declared lost.

**Deputy Holly Cairns:** I move amendment No. 250:

In page 31, to delete line 16 and substitute the following:

“(c) a record created or held by a data controller involved with the relevant relative's adoption, boarding out, nursing out and/or incarceration.”.

Amendment put and declared lost.

**Deputy Holly Cairns:** I move amendment No. 251:

In page 31, between lines 16 and 17, to insert the following:

“(d) the personal data of the relevant relative.”.

Amendment put and declared lost.

**Deputy Holly Cairns:** I move amendment No. 252:

In page 31, between lines 19 and 20, to insert the following:

“(6) Where the information is unavailable, the relevant body shall make every effort to locate the data controller holding the relevant relative's records.”.

Amendment put and declared lost.

Section 27 agreed to

## SECTION 28

**Vice Chairman:** Amendments Nos. 253 to 256, inclusive, are related and will be discussed together.

**Deputy Holly Cairns:** I move amendment No. 253:

In page 31, between lines 28 and 29, to insert the following:

“(d) the personal data of the relevant relative.”.

These are similar to the previous set of amendments. Amendments Nos. 253 and 256 add additional clarifying statements to the types of information that relatives can access. Amendment No. 254 removes the problematical statement “to the extent that it is practicable to do so”. Amendment No. 255 removes the option for the relevant body to provide what is essentially a summary or a list of information to the relative rather than a full schedule of records as insisted in amendment No. 256.

**Deputy Roderic O’Gorman:** I have a similar response. I want to put on record that section 27 provides for the release of birth information. Section 28 provides for the release of early life information, care information or incorrect birth registration information. Section 30 provides for the release of medical information. Section 29 provides for the release of provided items. Each set of information provided about a person who died in an institution is provided for across this range of sections. As such, we do not feel the amendment is necessary.

Amendment put and declared lost.

**Deputy Holly Cairns:** I move amendment No. 254:

In page 31, line 31, to delete “, to the extent that it is practicable to do so,”.

Amendment put and declared lost.

**Deputy Holly Cairns:** I move amendment No. 255:

In page 31, to delete lines 34 to 36.

Amendment put and declared lost.

**Deputy Holly Cairns:** I move amendment No. 256:

In page 31, between lines 36 and 37, to insert the following:

“(c) shall provide the applicant with a full schedule of the records that it holds in relation to the relevant person’s adoption or illegal birth registration.”.

Amendment put and declared lost.

**Deputy Holly Cairns:** I move amendment No. 257:

In page 32, between lines 6 and 7, to insert the following:

“(5) Where the information is unavailable, the relevant body shall make every effort to locate the data controller holding the relevant relative’s records.”.

Amendment put and declared lost.

Section 28 agreed to.

## SECTION 29

**Deputy Holly Cairns:** I move amendment No. 258:

In page 32, lines 9 and 10, to delete “a specified provided item, or”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 259:

In page 32, lines 10 and 11, to delete “, that was provided for the purpose of its being made available to his or her relevant relative”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 260:

In page 32, between lines 11 and 12, to insert the following:

“(2) Where a specified provided item is requested or the applicant believes that provided items exist and the relevant body is not in possession of the provided items, the relevant body shall make every effort to locate the data controller holding the provided item.”.

Amendment put and declared lost.

Section 29 agreed to.

## SECTION 30

**Vice Chairman:** Amendments Nos. 261 to 263, inclusive, are related. Amendments Nos. 262 and 263 are physical alternatives to amendment No. 261. Amendments Nos. 261 to 263, inclusive, will be discussed together.

Amendment No. 261 not moved.

**Deputy Holly Cairns:** I move amendment No. 262:

In page 32, between lines 35 and 36, to insert the following:

“(a) relating to a relevant person,”.

This adds to the broader category of a relevant person rather than the section as it stands, which only referred to an adopted person. This is about reassuring relatives on access to information held by relevant bodies regarding that person’s relative. Amendment No. 263 works in accordance with this, removing the limitation on information concerning only the adoption of a person and the restriction to records from only the institutions listed in the schedule. As we know, there are many other bodies and organisations involved in illegal adoptions.

**Deputy Roderic O’Gorman:** This group of amendments relates to section 30. Section 30 provides for the release of medical information of a child who died in an institution to his or her qualifying relative. Amendments Nos. 261 and 263 are similar to each other and proposed the deletion of section 30(4), which sets out the categories of records to be used in the search for the medical information of the child who is deceased. Amendment No. 262 proposes to expand the category of records to any that relate to a relevant person. This subsection provides clarity and consistency for relevant bodies. It cannot be deleted and does not require expansion. It also serves as a key data protection safeguard for the release of this special category data of a third party by ensuring specificity and limitation on the records that come into scope. Furthermore, it is expansive. It covers all records held or created by a mother and baby or county home institution.

Amendment put and declared lost.

**Deputy Holly Cairns:** I move amendment No. 263:

In page 32, to delete lines 36 and 37, and in page 33, to delete lines 1 and 2.

Amendment put and declared lost.

Section 30 agreed to.

**Vice Chairman:** Amendment No. 264 is out of order in accordance with Standing Order 187(1) as it is beyond the provisions of the Bill.

Amendment No. 264 not moved.

## SECTION 31

**Deputy Holly Cairns:** I move amendment No. 265:

In page 33, line 4, after “Minister” to insert “, in consultation with the Adoption Advisory Group,”.

Amendment put and declared lost.

Section 31 agreed to.

## SECTION 32

**Deputy Mark Ward:** I move amendment No. 266:

In page 33, between lines 13 and 14, to insert the following:

“(2) The Agency and the Authority shall employ trained genealogists to carry out the task of locating specified persons.”.

Amendment put and declared lost.

**Deputy Holly Cairns:** I move amendment No. 267:

In page 33, line 14, after “Agency” to insert “or the Authority”.

Amendment put and declared lost.

**Vice Chairman:** Amendments Nos. 268 to 270, inclusive, 274 and 288 are related and will be discussed together.

**Deputy Holly Cairns:** I move amendment No. 268:

In page 34, to delete lines 1 to 5.

This is an important one. Amendment No. 268 concerns the justifiable opposition to the Child and Family Agency having access to and processing personal data. Tusla is the default tracing service provider under the Bill, which is unacceptable given the agency is dealing with affected people. People should be given a choice of service provider, at the very least.

Amendment No. 269 removes the capacity of the Minister to intervene in the tracing process. This needs to be an absolute right that individuals can avail of themselves and not require ministerial interference.

Amendment No. 274 has a comparable purpose in removing the reference to section 33 and the role of the Minister in seeking information from individuals.

Amendment No. 270 adds a caveat to section 34(2) that requires the agency or the authority to first and foremost conduct reasonable research before seeking access to information from the person. Similar to amendment No. 268, this is about protecting adopted people and their relatives from any unnecessary request to divulge further information to these State bodies which have treated, and continue to treat, them disgracefully. There should be an overwhelming obligation on the authority and agency to carry out the tracing functions under this Bill without interfering in the lives of people affected.

Amendment No. 288 is significant in adding a much broader range of bodies to which the Minister can issue guidelines for the purposes of tracing. Currently, this only applies to the agency or the authority whereas our amendment will incorporate the range of State and

religious actors outlined in section 34(6), such as Departments, the HSE, the Roman Catholic Church and the Church of Ireland. It is both prudent and desirable that the Minister be permitted to issue such guidelines to those bodies, all of which have had substantial involvement in illegal adoptions.

**Deputy Roderic O’Gorman:** Before I respond to the points made by Deputy Cairns, I wish to put on the record that I intend to bring forward amendments on Report Stage to Part 5 of the Bill to ensure that the statutory tracing service delivered by Tusla can support the delivery of certain specialised tracing services in respect of suspected instances of illegal birth registration. That will be in Report Stage amendments I will bring forward. I am just notifying the committee of that at this point.

**Deputy Holly Cairns:** Can the Minister expand on that? What will it do?

**Deputy Roderic O’Gorman:** It will support the delivery of certain specialised tracing services in respect of suspected instances of illegal birth registration. It is, in part, to respond to some of the recommendations of the special rapporteur’s report on illegal birth registration and to give additional powers to respond to that.

In respect of the set of amendments that have been proposed, the provisions of the Bill allow for a tracing service and provide a statutory underpinning for a tracing service, a statutory underpinning that has been missing up to this point. It has meant that tracing is far more difficult for anybody, be it Tusla or the Adoption Authority of Ireland, AAI, to undertake. First, it is important to say that by giving tracing a statutory underpinning we will significantly improve the ability of these bodies to engage with other State bodies. Right now, GDPR is immediately used as a barrier to the exchange of information. The statutory obligation to share information with Tusla and the AAI will facilitate the provision of this information. It is also important to recognise that these are the bodies that have expertise and skill in tracing. We are very clear that we want people to be able to get the benefit of a tracing service immediately. It is important to say that these are the agencies with that level of expertise at present.

In terms of the specific amendments, we believe what is proposed in amendment No. 269 is already sufficiently provided for under this section. In response to amendment No. 288, our view is that it is unnecessary as the guidelines are only relevant to the authority and agency in providing tracing services and they do not need to be expanded to include bodies from which the authority and agency can request information. Those bodies do not have functions under this Part, only an obligation to comply with a request for information made in the context of a trace.

Amendment No. 274 is contrary to the policy intention of the legislation. Section 33 is an important provision to cover a potential situation where people must be traced and contacted with important information. To remove that reference could be detrimental should that situation arise.

With regard to amendments Nos. 268 and 270, I cannot see the necessity for those amendments. They would actually hinder the ability to provide a timely and efficient service. Amendment No. 268 seeks to remove the ability to refer to the contact preference register in the provision of a tracing service by either the agency or the authority and it does not provide for an alternative process. The decision to include this provision in the legislation was carefully considered. The ability to check a contact preference on the contact preference register is a very important part of how the tracing service will operate. First, in a scenario where a trace

has been initiated and the preference for contact is found to be on the register, then it is possible to immediately and efficiently proceed to the facilitation of whatever level of contact has been proffered by both parties, including up to a reunion or a sharing of information. It would avoid the need to go through a protracted tracing process if they can immediately refer to what is set out by parties on the contact preference register. Second, in a situation where a trace has been initiated and the preference for no contact is found on the register, this information is conveyed to the person who requested the trace and the person can decide whether or not to proceed. In both scenarios, by providing that the data on the register can be processed as part of the trace, the process is made more efficient.

Amendment No. 270 seeks to place restrictions on the manner in which the tracing service operates. During the drafting process, my officials and I engaged with the organisations currently providing tracing services. We requested their assistance in identifying the bodies from which information requests would be crucial to the provision of an effective and timely tracing service. As far as we are aware, the current non-statutory tracing service encounters very significant difficulties, delays and obstructions in the provision of its service due to the fact it cannot request key information from other bodies such as those listed in this legislation.

The purpose of section 34 is to ensure the tracing service provided under this legislation can operate in the most efficient manner possible and, therefore, accepting this amendment would be contrary to that goal and it would undermine that particular intention.

**Deputy Holly Cairns:** I understand the need for the immediacy of this and the question of a different agency for information that is not Tusla. The aim is not to slow the process for people getting information, and this is something we have discussed at great length in the committee. When witnesses came before the committee we heard that people were not just traumatised by interactions with Tusla but really retraumatised as well. There were stories of people sitting in front of social workers with their information in front of them, including birth name and the name of a mother and father. This is information that people have wanted to know for their entire life but even though the staff could have several pieces of information, they would not tell these people any of it.

We spoke about this a lot because none of us wanted to delay the process of people accessing their information. I request that the Minister and his Department give this consideration before the next Stage. Something must change in the way Tusla interacts with people who have been affected. Perhaps it could be a different department. Could we give this some consideration before the next Stage because it is really important? We must figure out a way that does not slow the process but we really cannot ignore it.

**Deputy Ivana Bacik:** As the Minister stated, we support the statutory underpinning of a tracing service and the provision of that statutory underpinning. The need for that was made clear. As Deputy Cairns said, the experience of Tusla of many of the witnesses who came before the committee was very negative. I look again at our recommendations Nos. 56 and 57 in the pre-legislative scrutiny report, where we indicated the dissatisfaction in experiences with Tusla and the AAI, and the need to ensure improvements in resourcing, culture and legal structure. There was also a recommendation that a new agency would carry out functions assigned and that interim arrangements would be made. These amendments are proposed in that spirit and in recognition of what we heard at committee meetings. The amendments deserve consideration.

The Minister has made a very significant indication that he will table amendments on Report Stage on the delivery of specialised placing services in the context of illegal birth registrations.

We probably all want a little more clarity on what those amendments would look like. Is it envisaged, for example, that there would be any provision for a criminal investigation or is it much more about the tracing of the birth? From the brave testimonies of people who have come forward and been the subject of illegal adoption, we are all conscious that the tracing in the context of these adoptions would be a much more difficult process because there were falsified records in some cases. Attempts were made to cover up in others.

Will the Minister outline exactly what will the specialised tracing look like at this stage? If anybody is affected by this, what should they expect in the context of Tusla's specialised tracing?

**Deputy Roderic O'Gorman:** I agree with Deputy Cairns. I have also heard from and met people who were adopted and subject to illegal birth registration. I have heard their very real and deep frustration with processes and how they were treated as individuals. I am very aware of that. I have said in these hearings on a number of occasions that we must change the culture in these organisations. We will do this in a number of ways.

First, we must amend the law because the law does not facilitate the proper release of information. That is why we are bringing forward this legislation and we believe it crucial in beginning that change. We are bringing forward guidelines to ensure and copper-fasten that culture of release of information and the presumption of release. That culture will be reinforced through the process of the implementation group led by my Department, ensuring alignment between our departmental review of the open release of information and that this is replicated across Tusla and the AAI.

This is also supported by resources. We have discussed in the context of the budget an extra €3 million for Tusla specifically to support the implementation of the information and tracing Bill this year and an extra €1 million for the AAI, again to do that work. Both of those bodies are hiring relevant staff and securing new expertise within their ranks to implement what is happening here.

there is also the provision in the legislation for a review of its operation. It is entirely possible that in future a decision could be taken to entirely remove the provision of tracing from certain bodies. The point I made in particular when we discussed this on Second Stage related to the suggestion of a creation of a new agency. I know the recommendation was made in good faith by the committee but to attempt that now would delay the availability of the provisions in this legislation.

In changing the law and culture and by providing the resources, we can change the experience that adopted people have in terms of their engagement with Tusla. I know the committee has had Mr. Bernard Gloster before it but I do not know if members discussed this particular point with him. I regularly discuss this matter with Mr. Gloster both in the context of our quarterly meetings and, for various reasons, when I am on the phone to him regularly. This is a core matter. It may be useful for the committee to hear from him as chief executive on the work he is doing within the organisation to bring about this culture change. I know many adopted people are not reassured and will not be reassured until they see change. Perhaps it is the same for the committee. It might be useful, rather than hearing it from me, to hear it directly from the chief executive.

I made a point regarding the tabling of an amendment on Report Stage and Deputy Bacik is correct. Illegal birth registration is extremely hard to prove. The reason is it is an illegal act

and the person or persons perpetrating that act would have done their best to cover their tracks. I do not know why but the people who engaged in this illegal act in St. Patrick's Guild did not cover their tracks but drew attention to the acts on the cover of the files by indicating adoption for birth. That allowed the investigation to take place.

We will table an amendment that will expand section 33, allowing a Minister to request the review of files in certain circumstances. This is primarily dealing with cases where an individual has no idea he or she is subject to an illegal birth registration. As the Deputy knows, the legislation provides a route for people with a suspicion to go through but where Tusla, in particular, identifies a file about which it has very significant concerns, the amendment will allow a Minister direct the agency to undertake further tracing.

**Senator Ivana Bacik:** I thank the Minister. That is very helpful.

Amendment put.

The Committee divided: Tá;, 4; Níl, 6.	
Tá;	Níl;
Bacik, Ivana.	Costello, Patrick.
Cairns, Holly.	Crowe, Cathal.
Funchion, Kathleen.	Dillon, Alan.
Ward, Mark.	Murnane O'Connor, Jennifer.
	O'Gorman, Roderic.
	Phelan, John Paul.

Amendment declared lost.

Section 32 agreed to.

Question, "That section 33 stand part of the Bill", put and declared carried.

#### SECTION 34

**Deputy Kathleen Funchion:** I move amendment No. 269:

In page 34, lines 28 and 29, to delete " , or where the Minister authorises it to do so under *section 33*,".

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 270:

In page 34, after line 37, to insert the following:

"(4) A request under *subsection (2)* may be made only where the Agency or the Authority reasonably has exhausted all other non-intrusive avenues, including a search of the Register of Electors and the civil registration system."

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 271:

In page 35, between lines 2 and 3, to insert the following:

“(5) A person who receives a request made under *subsection (2)* shall sign a nondisclosure agreement.”.

Amendment put and declared lost.

**Vice Chairman:** Amendments Nos. 272 and 273 are related and will be discussed together.

**Deputy Holly Cairns:** I move amendment No. 272:

In page 35, to delete line 15.

These interactions are an unnecessary breach of the relevant persons’ privacy. The inclusion of church representatives in section 34(6) is particularly egregious considering that the Bill fails to name religious orders for other entities as data controllers. Moreover, it does not seem to have occurred to the Minister or the Department that some of the church representatives whom Tusla and the Adoption Authority Of Ireland are authorised to approach may have been involved in adoptions, both legal and illegal. Section 36(6)(g) and (h) need to be deleted and these data controllers must instead be obliged to furnish the AAI with all adoption records they hold in order that they can be made available to persons affected.

While my party appreciates that there may be some instances where a person is difficult to find, in the vast majority of cases a trained genealogist will be able to locate someone through discreet measures using public records and other information in the public domain. While social workers have a fundamental role in society, they do not have the skills or training required to undertake tracing research and to ensure the confidentiality of affected persons is protected where interactions such as those described in section 34 are genuinely required. A person who receives a request for information must be required to sign a non-disclosure agreement.

**Deputy Roderic O’Gorman:** Section 34 provides in part for the ability of the AAI or Tusla to undertake tracing and request information from as wide a set of information sources as possible. The amendment proposes to remove the ability of these agencies to engage with a diocese or parish of the Roman Catholic Church or the Church of Ireland. The proposal is to remove those organisations from the process. They were added to the bodies that could be consulted in the context of a trace because of the existence of marriage and baptismal certificates. These documents, particularly baptismal certificates, are valuable sources of information, including names that can be used to facilitate a trace. Baptismal certificates were not included in the original draft of the Bill but they are included now. They can be a very good source of information. Guardians or godparents can also be identified on a baptismal certificate. This is also valuable information.

The process of consulting church records is invaluable in the context of the provision of a tracing service. To remove the ability to engage with churches for the purposes of requesting such important information would limit the ability of the tracing services. We do not see any benefit in that and, therefore, I cannot accept the amendment.

**Deputy Holly Cairns:** If that is the case, could the organisations in question be named as data controllers as well? The Minister is acknowledging how much relevant and important information they have but they have not been included as data controllers. Has consideration been given to the fact that the tracing services could be engaging with people in the religious orders who were potentially involved with adoptions, illegal or legal?

**Deputy Roderic O’Gorman:** We have confirmed that the definition of “relevant body” contained in the legislation can include religious bodies and other private entities. This means they can be designated as secondary information sources. What we are talking about here is the ability to engage with a parish church in Blanchardstown or Kilkenny to see if we can look at its register to find out if there is information available on a particular individual. Restricting the type of valuable information the tracing service could secure from that would negatively impact on its ability to undertake tracing.

**Deputy Holly Cairns:** I understand that. Given the possibility that members of those churches may have been involved in previous illegal or legal adoptions, would it not be better to seize records for these purposes rather than requesting them from these organisations?

**Deputy Roderic O’Gorman:** We have the power to designate records under this legislation.

**Deputy Holly Cairns:** Should we not designate all of them in that case?

**Vice Chairman:** Allow the Minister to respond.

**Deputy Holly Cairns:** My apologies.

**Deputy Roderic O’Gorman:** The definition of relevant bodies allows us to designate organisations as relevant bodies and people can also apply directly to them for their information. What we are trying to do is facilitate the tracing process and in order to do that the tracers need to be able to engage with these entities to access the information that appears on valuable documents such as marriage and baptismal certificates.

**Deputy Holly Cairns:** It seems confusing to expect an organisation to potentially incriminate itself by passing on information that it does not have to provide. We will discuss this matter further on Report Stage.

Amendment put and declared lost.

**Deputy Holly Cairns:** I move amendment No. 273:

In page 35, to delete line 16.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 274:

In page 35, lines 24 and 25, to delete “or, in the case of an authorisation under *section 33*”.

Amendment put and declared lost.

**Vice Chairman:** Amendment No. 275 has been ruled out of order in accordance with Standing Order 212(3) as it has the potential to impose a charge on the Revenue.

Amendment No. 275 not moved.

**Deputy Holly Cairns:** I move amendment No. 276:

In page 35, line 26, after “Minister” to insert “, in consultation with the Adoption Advisory Group,”.

Amendment put and declared lost.

Section 34 agreed to.

## SECTION 35

**Vice Chairman:** Amendments Nos. 277 to 281, inclusive, and 283 are related and will be discussed together.

**Deputy Kathleen Funchion:** I move amendment No. 277:

In page 35, line 33, to delete “take all reasonable steps” and substitute “make every effort”.

We will take these amendments as read as they are repetitive given the other amendments we have spoken to.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 278:

In page 35, after line 39, to insert the following:

“(d) he or she wishes to obtain a copy of his or her personal data held by the Agency and/or the Authority.”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 279:

In page 36, line 6, after “shall” to insert the following:

“inform both persons of their right to choose whether they—

(a) wish to proceed with contact without the assistance of the Agency or the Authority, or

(b) wish to proceed with contact with the assistance of the Agency or the Authority.”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 280:

In page 36, lines 6 and 7, to delete “take such action as it considers appropriate to facilitate such contact”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 281:

In page 36, between lines 7 and 8, to insert the following:

“(4) Where both the requester and the specified person wish to proceed with contact without the assistance of the Agency or the Authority, the Agency or the Authority shall, without delay, provide each person with contact details for the other.”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 282:

In page 36, between lines 7 and 8, to insert the following:

“(4) Where either or both persons wish to proceed with contact with the assistance of the Agency or the Authority, contact shall be facilitated in line with statutory guidelines set out by the Minister in consultation with the Adoption Advisory Group.”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 283:

In page 36, between lines 7 and 8, to insert the following:

“(4) Where either or both persons have proceeded with contact with the assistance of the Agency or the Authority, but both persons subsequently decide they wish to be in direct contact with each other, the Agency or the Authority shall, without delay, provide each person with contact details for the other.”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 284:

In page 36, line 10, after “shall” to insert the following:

“, in accordance with statutory guidelines set out by the Minister in consultation with the Adoption Advisory Group,”.

Amendment put and declared lost.

Section 35 agreed to.

## SECTION 36

**Vice Chairman:** Amendments Nos. 285 and 286 are related and will be discussed together.

**Deputy Kathleen Funchion:** I move amendment No. 285:

In page 36, between lines 27 and 28, to insert the following:

“(c) a request by the Authority that the relevant authority provide all records relating to the person’s adoption so that they can be made available to the person.”.

Amendment No. 285 provides that every effort shall be made to access information held by bodies in other jurisdictions. The subsection currently does not clearly oblige the authority to seek to make the information available. Amendment No. 286 adds a requirement for the authority to provide the adopted person with all records immediately when received from a body in other jurisdictions. We feel this provision is necessary given the level of distrust that currently exists, understandably, with adopted people and relatives.

**Deputy Roderic O’Gorman:** The amendment is similar to ones we discussed earlier in terms of the ability of an adopted person to retain control over the type of information they request. The consequence of this information is that an adopted person would be provided with

all information, even if they only apply for certain categories of information. We are all of the belief the majority of adopted people will apply for all categories of information. The application form will make provision for one box to be ticked to get all information, but in a situation where an adopted person seeks certain types of information but not other types of information, that is their choice and this amendment would have the consequence that they would receive all information, even if there were categories they were not seeking.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 286:

In page 36, between lines 29 and 30, to insert the following:

“(4) The Authority, on receipt of an application under *subsection (1)*, shall immediately provide the adopted person with all records relating to their adoption.”.

Amendment put and declared lost.

Section 36 agreed to.

## SECTION 37

**Deputy Kathleen Funchion:** I move amendment No. 287:

In page 36, line 31, after “Minister” to insert “, in consultation with the Adoption Advisory Group,”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 288:

In page 36, line 32, after “Authority” to insert “and the bodies to which *section 34* apply”.

Amendment put and declared lost.

Section 37 agreed to.

## SECTION 38

**Vice Chairman:** Amendments Nos. 289 and 290 are related and may be discussed together by agreement. Is that agreed? Agreed.

**Deputy Kathleen Funchion:** I move amendment No. 289:

In page 37, line 6, after “to” to insert “provide a service to people affected by adoption and informal care arrangements”.

Amendment No. 289 states: “In page 37, line 6, after “to” to insert “provide a service to people affected by adoption and informal care arrangements”. Amendment No. 290 states: “In page 37, between lines 6 and 7, to insert the following: “(a) safeguard and maintain existing registrations on the National Adoption Contact Preference Register,”.

The purpose of amendment No. 289 is to provide clarity on the function of the contact preference register, which is an important aspect of the Bill in an area of personal and technical complexity. It is important that the purpose is clearly articulated for the benefit of those who

avail of it and who would be impacted by it. Amendment No. 290 ensures that existing registrations on the national adoption contact preference register are preserved. No ambiguity should be allowed concerning the role of the new register in relation to former registers. We believe this amendment clarifies the relationship and protects current records.

**Deputy Roderic O’Gorman:** I cannot support amendment No. 289. The objective of it would appear to be to elaborate on the purpose of the contact preference register. However, the people for whom the register provides a service is already clearly outlined in section 38(3) and, as such, we feel this amendment has no material effect.

I also cannot accept amendment No. 290. The objective of the amendment is to maintain the existing national contact preference register. Again, we consider the amendment is unnecessary, as the transfer of the existing information that is on the existing register to the new contact preference register is already provided for in section 42. Section 42 enables the existence of a single contact preference register once the existing data have been transferred and six months have elapsed after the date on which the section comes into operation. Rather than creating no ambiguity, as was suggested, it would copper-fasten ambiguity, as we would have two contact preference registers in existence at the same time, so that would cause confusion, but it would also be a clear breach of the GDPR, in particular Article 25 on data protection by design and by default. Article 25 is clear that unnecessary data should not be retained. That is why we oppose the amendment.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 290:

In page 37, between lines 6 and 7, to insert the following:

“(a) safeguard and maintain existing registrations on the National Adoption Contact Preference Register.”.

Amendment put and declared lost.

**Vice Chairman:** Amendments Nos. 291 to 294, inclusive, 296, 301 and 302 are related and may be discussed together, by agreement. Is that agreed? Agreed.

**Deputy Kathleen Funchion:** I move amendment No. 291:

In page 37, line 25, after “deceased” to insert “except in instances where there are or have been child protection issues”.

We are happy for the amendments in this group and the following two groups to be taken as read because we have made the points regarding them already.

**Deputy Roderic O’Gorman:** I wish to speak briefly to amendments Nos. 293 and 294 because there is some good news. Amendments Nos. 293, 294 and 301 seek to allow a person who was the friend of a parent or the friend of a deceased relevant person to make an entry on the register, although the amendment would prohibit them from making an entry stating a no-contact preference. If I understand and accept the spirit of this amendment, it speaks to the importance of found family and the bonds people build outside of traditional family structures and it seeks to make it possible for information to pass on from the closest of friends. I cannot accept the text that has been put before us here, but I will ask my officials to consult with the Office of the Parliamentary Counsel and consider whether an amendment can be made. I

cannot guarantee it, but I understand what is being attempted here, so we will look and see if something can be done.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 292:

In page 37, line 26, after “deceased” to insert “except where the adopted person has lodged an objection to such an entry prior to their death”.

Amendment, by leave, withdrawn.

**Deputy Kathleen Funchion:** I move amendment No. 293:

In page 37, between lines 29 and 30, to insert the following:

“(h) a person who is or was a friend of a parent of a relevant person.”.

Amendment, by leave, withdrawn.

**Deputy Kathleen Funchion:** I move amendment No. 294:

In page 37, between lines 29 and 30, to insert the following:

“(h) a person who is or was a friend of a deceased relevant person.”.

Amendment, by leave, withdrawn.

**Deputy Kathleen Funchion:** I move amendment No. 295:

In page 37, line 32, after “*subsection (2)*” to insert “and in line with guidelines compiled by the Adoption Advisory Group”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 296:

In page 37, between lines 32 and 33, to insert the following:

“(5) The Authority shall make an entry in the register unless it is satisfied that the registrant is the person they claim to be.”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 297:

In page 38, between lines 7 and 8, to insert the following:

“(iv) his or her right to submit a subject access request for all personal data held by the Authority,”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 298:

In page 38, line 12, after “Minister” to insert “, in consultation with the Adoption Advisory Group,”.

Amendment put and declared lost.

**Vice Chairman:** Amendments Nos. 299 and 300 are related and will be discussed together.

**Deputy Kathleen Funchion:** I move amendment No. 299:

In page 38, to delete lines 35 to 37.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 300:

In page 39, between lines 23 and 24, to insert the following:

“(f) he or she is not willing to be contacted by the specific person at the moment, but would like to be notified if the specific person registers.”.

**Deputy Roderic O’Gorman:** The amendment proposes that a person be able to register a no contact preference but also a wish to be notified if a named person makes an entry on the register. I understand the intention of the amendment. We are not entirely sure if we will be able to deliver on that but we will examine and address it with the Office of Parliamentary Counsel to see if something can be done.

Amendment, by leave, withdrawn.

Amendment No. 301 not moved.

**Deputy Kathleen Funchion:** I move amendment No. 302:

In page 40, between lines 2 and 3, to insert the following:

“(f) a genetic relative of a person or a parent.”.

Amendment put and declared lost.

Section 38 agreed to.

Sections 39 and 40 agreed to.

## SECTION 41

**Deputy Kathleen Funchion:** I move amendment No. 303:

In page 42, line 14, after “under” to insert “*Part 2, Part 3, Part 4* and”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 304:

In page 42, line 14, after “*Part 5*” to insert “as applicable”.

Amendment put and declared lost.

Section 41 agreed to.

## SECTION 42

## SCEDIY

Amendments Nos. 305 and 306 not moved.

**Deputy Kathleen Funchion:** I move amendment No. 307:

In page 42, between lines 28 and 29, to insert the following:

“(3) The Authority shall, no later than 6 months after the date on which this section comes into operation, arrange for secure, encrypted storage of the National Adoption Contact Preference Register.”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 308:

In page 42, to delete lines 29 and 30.

Amendment put and declared lost.

Section 42 agreed to.

## SECTION 43

**Deputy Kathleen Funchion:** I move amendment No. 309:

In page 42, line 34, after “Minister” to insert “, in consultation with the Adoption Advisory Group,”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 310:

In page 43, between lines 5 and 6, to insert the following:

“(d) it relates to an arrangement or attempted arrangement, whether legal or illegal, for the adoption of a child.”.

Amendment put and declared lost.

Section 43 agreed.

## SECTION 44

**Vice Chairman:** Amendments Nos. 311 to 313, inclusive, 324, 327 and 331 are related and will be discussed together.

**Deputy Kathleen Funchion:** I move amendment No. 311:

In page 43, between lines 19 and 20, to insert the following:

“(3) Nothing in this Part shall interfere with the GDPR rights of relevant persons or parents.”.

**Deputy Holly Cairns:** Amendments Nos. 311, 324 and 331 provide absolute clarity that individuals’ GDPR rights will not be limited by these sections. Given the very restrictive interpretation of GDPR rights by Departments and State bodies, it is necessary to clearly state that these sections do not interfere with GDPR.

Amendment No. 312 ensures that all relevant records will be transferred to the national memorial and record centre when it is established. It is important to include this obligation to ensure that all bodies impacted will be aware of their obligations when the national memorial and record centre is set up. Currently there is no provision in the Bill for this.

Amendment No. 313 removes the potential restrictions under section 443 that limit the capacity of bodies holding information to make it available. It is a very prescriptive approach that could lead to limitations of individuals accessing data.

**Deputy Roderic O’Gorman:** I will speak to those and to my amendment No. 327 as well. The amendments spoken to by the Deputy relate specifically to adding text regarding not interfering with the GDPR rights of relevant persons or parents. I reassure members that it is not the intention of the Bill to, and, more importantly, the Bill does not in any way, interfere with a person’s right to apply for their information through a subject access request. The Bill does contain a limited limitation of GDPR rights. That is inherent in what we are trying to do here because the right of another party to not accept the processing of their information, which is provided for under GDPR at the moment, will not be available to people seeking to prevent the release of their information to an adopted person. It is that limitation that is provided for. If these amendments are accepted to say GDPR applies as normal at all times, it will undermine the very limited exception to GDPR that we have provided here, which ensures no one can prevent an adopted or boarded out person getting access to their information.

Amendment No. 327 relates to Part 9, which provides for an information campaign. It relates to the right to access information and the right to rectification for mothers and fathers. It is a response to my consultation with parents but particularly with mothers. I know that some of that group also engaged with the committee. The amendment will ensure that a mother or father’s right to access information about themselves held by an institution and, importantly, the right to rectification of inaccurate or incomplete information under GDPR is highlighted to them as part of the information campaign that will be run for three months on enactment of this legislation. When I spoke to individuals they were not aware of some of the existing rights available to them under GDPR. There was a particular concern if, say, derogatory comments or untrue information about the context of their pregnancy were placed on the file. This mandates within the information campaign that these rights of access but also rectification will be conveyed.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 312:

In page 43, between lines 19 and 20, to insert the following:

“(3) When the National Memorial and Records Centre is established, a primary information source shall make arrangements for the transfer of all relevant records to the National Memorial and Records Centre.”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 313:

In page 43, to delete lines 20 to 22.

Amendment put and declared lost.

SCEDIY

Section 44 agreed to.

SECTION 45

**Deputy Kathleen Funchion:** I move amendment No. 314:

In page 43, line 28, to delete “if directed by the Authority” and substitute “whether or not it has been directed by the Authority”.

This places a requirement on the data controller to ensure that every effort is made to ensure that all relevant record holders transfer their files to the AAI in order that they can be made available to affected people regardless of whether they have been requested. In particular, we are extremely concerned that individuals who facilitated private and often illegal adoptions will be able to evade their responsibilities under this.

**Deputy Roderic O’Gorman:** This amendment seeks to remove the Adoption Authority of Ireland’s discretion in terms of issuing directions to a secondary information source to provide a statement of the records it holds. The priority with this legislation is to provide for the release of records. We know the majority of those are held by Tusla and the Adoption Authority of Ireland. I want to make sure all efforts are made to ensure access is facilitated. It is important the Adoption Authority of Ireland has the ability to prioritise which secondary information sources should provide statements in order that those at risk or with key information are given its immediate attention.

Amendment put and declared lost.

Section 45 agreed to.

SECTION 46

**Deputy Kathleen Funchion:** I move amendment No. 315:

In page 44, line 13, to delete “as soon as practicable” and substitute “immediately”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 316:

In page 44, between lines 14 and 15, to insert the following:

“(2) The Authority shall make available a telephone number, email address and postal address to facilitate any person with knowledge of the location of a relevant record to make a report.”.

Amendment put and declared lost.

Section 46 agreed to.

SECTION 47

**Vice Chairman:** Amendments Nos. 317 and 318 are related and may be discussed together.

**Deputy Kathleen Funchion:** I move amendment No. 317:

In page 44, to delete line 18.

Amendment No. 317 seeks to remove the provision that bodies holding information should only preserve information they hold on the day the section comes into operation. Again, this is a limitation as bodies may subsequently come into new information and will be under no obligation under this section to maintain those records.

Amendment No. 318 places the obligation on other individuals and bodies to transfer records to the authority. There are a significant range of actors outside of those listed as information sources. This amendment recognises that information may be held by additional individuals or bodies and ensures records held by them will be transferred to the authority.

**Deputy Roderic O’Gorman:** I cannot accept these amendments. Part 7, which relates to the safeguarding of records, has been carefully developed to provide clarity to the Adoption Authority of Ireland and to the holders of records. The authority must have the ability to consider what records are, in fact, relevant. To do otherwise could result in a glut of records arriving at the door of the Adoption Authority of Ireland, many of which may not actually relate to matters covered under this Bill. It is a more practical approach whereby the authority has control over the types of records being transferred and the timing of that transfer.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 318:

In page 44, between lines 20 and 21, to insert the following:

“(2) A person other than an information source who is in possession of a relevant record is obliged to transfer to the Authority all relevant records in its possession.”.

Amendment put and declared lost.

Section 47 agreed to.

## SECTION 48

**Deputy Kathleen Funchion:** I move amendment No. 319:

In page 44, line 31, after “shall” to insert “, in line with guidelines issued by the Adoption Advisory Group,”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 320:

In page 45, between lines 25 and 26, to insert the following:

“(d) the guidelines issued by the Adoption Advisory Group.”.

Amendment put and declared lost.

Section 48 agreed to.

## SECTION 49

**Deputy Kathleen Funchion:** I move amendment No. 321:

In page 45, line 34, to delete “relevant” and substitute “all”.

## SCEDIY

Amendment put and declared lost.

Section 49 agreed to.

Section 50 agreed to.

## SECTION 51

**Deputy Kathleen Funchion:** I move amendment No. 322:

In page 47, line 34, after “may” to insert “, in line with guidelines issued by the Adoption Advisory Group,”.

Amendment put and declared lost.

Section 51 agreed to.

## SECTION 52

**Deputy Kathleen Funchion:** I move amendment No. 323:

In page 48, to delete lines 17 and 18.

I will speak to this amendment briefly because it was not already discussed. In deleting this section, we are removing the restriction on people whose births were illegally registered before 31 December 1980. The general scheme of the Bill states an affected person is someone whose birth was illegally registered before 31 December 1970. How was this date arrived at? It seems arbitrary and flawed. Although the State is clearly aware these practices were not restricted to one agency or a single timeframe, instead of ensuring each and every affected person can access his or her information in the Bill, it merely changed the original cut-off from 1970 to 1980 instead of removing the time limit altogether. We feel strongly there should be no time limits on this.

**Deputy Roderic O’Gorman:** I am conscious from my engagement with individuals who have been affected by illegal birth registrations that, obviously, many wish to continue to live by their current identity and that is what we have provided for under this section. The Bill provides for the new register that will reflect and give legal protection to an individual’s lived identity.

Amendment No. 323 seeks to delete “an entry in the register of births relating to his or her birth was made on or before the 31st day of December 1980” from the definition of “affected person”. This definition was created in careful consultation, having engaged with the groups, and understands the time period within which the St. Patrick’s Guild illegal birth registrations took place. The cut-off was set at 1980 to ensure all known illegal birth registrations would be captured and would benefit from the provisions of this Bill. At the same time, the cut-off point in respect of legal advice was that the definition should not be open-ended such that it would encompass children and young people under the age of 24 years.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 324:

In page 51, between lines 20 and 21, to insert the following:

“(3) Nothing in this section shall interfere with the GDPR rights of the affected person.”.

Amendment put and declared lost.

Section 52 agreed to.

Section 53 agreed to.

#### NEW SECTION

**Deputy Roderic O’Gorman:** I move amendment No. 325:

In page 52, between lines 17 and 18, to insert the following:

**“Provision relating to persons the subject of incorrect birth registration**

**54.** (1) For the avoidance of doubt, the fact that a person is the subject of an incorrect birth registration shall not affect—

(a) the rights or liabilities acquired, or

(b) the validity or consequences of an action done,

in good faith by him or her.

(2) Without prejudice to the generality of *subsection (1)*, the rights, liabilities, validity and consequences to which that subsection applies shall not be affected by the fact that they were acquired or the action concerned was done, as the case may be, by the person concerned—

(a) in particular name,

(b) on the basis that he or she had attained a particular age, or

(c) on the basis that a particular person was his or her parent or other relative.

(3) For the avoidance of doubt, any rule of law, custom or practice by which a person may use a particular name applies to a person who is the subject of an incorrect birth registration.”.

I am tabling amendments Nos. 325 and 327 but I will also speak to the intention to table a further amendment on Report Stage.

Individuals affected by illegal birth registrations may discover they had a different name than their social name that was used in various contracts and legal documents. They may also have a different age by a matter of days, weeks or, indeed, months than that recorded on their incorrect birth registration. As we know, as members of society, we are all often asked to complete a declaration when applying for services or engaging in contracts with both the State and private organisations. This kind of declaration will also often ask the applicant to ensure the facts provided in the form are true and correct to the best of his or her knowledge. Through consultation and engagement with those impacted by illegal birth registration, I understand that for some people this declaration now poses a challenge and causes discomfort given they know about their birth of origin.

Amendment No. 325 seeks to address this directly and is in line with the recommendations from the interdepartmental group on the St. Patrick’s Guild incorrect birth registrations. The amendment will provide assurance that contracts, legal documents and any acts undertaken in

good faith will not be invalidated or that the persons affected will not experience any adverse consequences simply because they were the subject of an incorrect birth registration. This assurance will apply both retrospectively and prospectively. It does apply retrospectively, however, which is important; that is, prior to the passing of legislation and before the affected person discovered his or her birth was incorrectly registered.

I also intend to bring amendments on Report Stage to deal with the issue of succession in respect of persons affected by illegal birth registration. This issue was raised by the interdepartmental group I established last year to address issues arising for people affected by illegal birth registration. Since then, I have been liaising with the Minister for Justice on amendments to the Succession Act 1965, which falls within the competence of the Department of Justice. These amendments will ensure that people affected by illegal birth registrations would, for the purposes of succession and inheritance, be deemed to be the children of their social parents. It is proposed that the amendments will be carried in the Birth Information and Tracing Bill, again, so affected persons can benefit from them as quickly as possible. That amendment will be brought forward on Report Stage.

**Deputy Ivana Bacik:** I welcome the Minister's indication of those future amendments. To clarify, will those amendments to the Succession Act be in this legislation, despite being within the remit of the Minister for Justice?

**Deputy Roderic O'Gorman:** Yes. We will bring those forward on Report Stage.

**Senator Ivana Bacik:** That is great reassurance. I thank the Minister. Amendment No. 325 is also very welcome.

Amendment agreed to.

**Deputy Kathleen Funchion:** I move amendment No. 326:

In page 52, line 19, after "shall," to insert "in line with guidelines issued by the Adoption Advisory Group,".

Amendment put and declared lost.

**Deputy Roderic O'Gorman:** I move amendment No. 327:

In page 52, between lines 33 and 34, to insert the following:

"(d) the rights of a person, in particular a mother or father, under the General Data Protection Regulation of access to personal data concerning him or her and of rectification of inaccurate personal data concerning him or her;".

Amendment agreed to.

**Deputy Kathleen Funchion:** I move amendment No. 328:

In page 52, after line 35, to insert the following:

"(2) Prior to the design and launch of the public information campaign, the Authority shall consult advocacy and representative groups of relevant persons and parents and the Adoption Advisory Group as to the tone and content of the campaign.".

Amendment put and declared lost.

Section 54, as amended, agreed to.

## SECTION 55

**Deputy Kathleen Funchion:** I move amendment No. 329:

In page 53, line 2, after “may” to insert “, in line with guidelines issued by the Adoption Advisory Group,”.

Amendment put and declared lost.

Section 55 agreed to.

## SECTION 56

**Deputy Kathleen Funchion:** I move amendment No. 330:

In page 53, lines 16 and 17, to delete “, where he or she is designated under *section 55* as a relevant body,”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 331:

In page 53, after line 39, to insert the following:

“(5) Nothing in this section shall interfere with the GDPR rights of relevant persons or parents.”.

Amendment put and declared lost.

Section 56 agreed to.

## SECTION 57

**Vice Chairman:** Amendments Nos. 332 to 336, inclusive, are related and may be discussed together.

**Deputy Holly Cairns:** I move amendment No. 332:

In page 54, line 2, to delete “insofar as practicable” and substitute “make every effort to”.

This amendment advises the agency or the authority to make “every effort” to offer assistance and support, rather than just as far “as practicable”. People feel it is staggering, after everything we know, that the lesser category of assistance and support is suitable.

Similarly, amendments Nos. 333 to 335, inclusive, are about ensuring that relevant people are provided with assistance rather than the lesser category of support. Adopted people and their relatives need help and the removal of barriers. That has been the paramount function of this Bill. Amendment No. 333 removes the paternalistic “as it considers appropriate” sentence. Adopted people should decide what is appropriate and necessary and not State bodies. Amendment No. 335 provides specifically for trained archivists to be involved in the process. They can provide the expertise that people need in accessing records and information. Amendment No. 336 removes a restriction on when counselling services can be offered. Amendment No. 337 ensures that.

We are coming to the end of this process. The whole purpose of this legislation is to provide unfettered access - the officials keep using that terminology - but after going through 300 amendments and not one of them being accepted, are we completely confident that people will get unfettered access to their information? We have discussed over and over again, at great length, why people do not feel that will happen. One reason is distrust of State agencies and bodies, and people's experience for decades of being treated in that way. A second reason is that they had very many concerns about the specific language in this Bill and none of the amendments dealing with that have been accepted. As we come to a close, reassurance that people will have that unfettered access is appropriate.

**Deputy Roderic O'Gorman:** It is our purpose to propose unfettered access. This legislation has developed from heads of Bill. Changes were made between the heads of Bill and the introduction of this draft legislation. Since the publication of the draft legislation, I have brought forward a set of important amendments, which have been agreed by this committee. In the context of the significant number of amendments that we discussed, I have agreed to go back to the Office of the Parliamentary Counsel on the wording and implementation of a number of them where I believe they strengthen the Bill and chime with the view we all have of bringing about better legislation. Where I did not agree with the provisions of the amendments, I put forward clear arguments for that, primarily on the basis that the issues concerned were already addressed in the Bill.

There are one or two important areas where there is a clear disagreement. We had the opportunity to discuss that and we will have the same opportunity on Report Stage, but I have carefully considered every amendment here. I have given them fair consideration and answered the concerns that have been brought forward as to why those amendments were not implemented. As I said, my officials and I will go back to the Office of the Parliamentary Counsel on a number of the points raised and we will continue to strengthen this legislation. I have also indicated that I will bring forward new amendments on a number of points, again, with a view to strengthening this legislation and making sure that all information is available to adopted people and to those who are the subject of illegal birth registrations.

**Vice Chairman:** Before we move to a question on that, I am conscious that we are scheduled to finish at 9.30 p.m., which is three minutes from now. We are on amendment No. 332. We have sped up, perhaps a little too much. I am in the committee's hands as to whether we keep going or finish. I am not 100% confident, even with a little extra time, we will get all the way through. We are very close, however, and there will be a vote in the Dáil at some point.

**Deputy Kathleen Funchion:** There is only more amendment that we will discuss, if that is any help.

**Vice Chairman:** We still have to jump through-----

**Deputy Kathleen Funchion:** I think we could get it done in three minutes.

**Vice Chairman:** We will still have to jump through the hoops. I will try to remember my lines.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 333:

In page 54, line 10, to delete "such support as it considers appropriate" and substitute

“assistance”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 334:

In page 54, line 11, to delete “support” and substitute “assistance”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 335:

In page 54, line 13, to delete “support” and substitute “assistance provided by a trained archivist”.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 336:

In page 54, to delete lines 15 and 16.

Amendment put and declared lost.

Section 57 agreed to.

Sections 58 to 62, inclusive, agreed to.

## SECTION 63

**Vice Chairman:** Amendments Nos. 337 and 338 are related and will be discussed together.

**Deputy Kathleen Funchion:** I move amendment No. 337:

In page 56, line 18, after “Authority” to insert “, on the request of a relevant person or the parent of a relevant person, shall inform the person”.

Deputy Cairns covered these amendments in her previous contribution.

Amendment put and declared lost.

**Deputy Kathleen Funchion:** I move amendment No. 338:

In page 56, lines 18 and 19, to delete “shall inform a parent who makes a statement to which *section 38(11)(c)* applies”.

Amendment put and declared lost.

**Vice Chairman:** Amendment No. 339 has been ruled out of order in accordance with Standing Order 212(3) as it has the potential to impose a charge on the Revenue.

Amendment No. 339 not moved.

**Deputy Kathleen Funchion:** I move amendment No. 340:

In page 56, to delete lines 23 to 25.

Amendment put and declared lost.

**Vice Chairman:** Amendment No. 341 has been ruled out of order in accordance with Standing Order 212(3) as it has the potential to impose a charge on the Revenue.

Amendment No. 341 not moved.

Section 63 agreed to.

## SECTION 64

**Deputy Kathleen Funchion:** I move amendment No. 342:

In page 56, line 31, to delete “4 years” and substitute “1 year”.

This is the last amendment that I want to speak to. It relates to the review period. As I understand it, the legislation currently provides that it will be reviewed after four years. My party believes that is far too long and a one-year period would be much more beneficial. If there are difficulties or issues with the legislation, a review after one year will provide an opportunity to make changes. I do not see how anyone would disagree with that. It was one of the issues the committee discussed, particularly in relation to the idea of a new agency. We understood that would not happen overnight and we did not want to delay the process. We believed, however, that having a review after a year could at least identify if the legislation was working.

I feel strongly that this amendment should be accepted. It is not unrealistic to seek to have the period changed from four years to one year. Four years is a long time if something is not working, particularly when we are dealing with people who have such distrust. We have spoke about that and everybody acknowledges it. If the legislation was reviewed after a year, at least people could see whether it was working. Four years is a long time to wait before rectifying a problem.

**Deputy Roderic O’Gorman:** A review after one year is too short to understand the full operation of the legislation. Nevertheless, I agree with Deputy Funchion that four years is a long time. We will discuss this and bring an amendment on Report Stage to reduce the period from four years. We need to consider what we believe to be an appropriate time but we will reduce the period from four years.

**Deputy Kathleen Funchion:** I appreciate that and thank the Minister.

Amendment, by leave, withdrawn.

**Deputy Kathleen Funchion:** I move amendment No. 343:

In page 56, after line 32, to insert the following:

“(2) The review will be open to public submissions and subject to meaningful engagement with affected persons and the Adoption Advisory Group.”.

Amendment put and declared lost.

Section 64 agreed to.

Sections 65 and 66 agreed to.

## NEW SECTIONS

**Vice Chairman:** Amendments Nos. 344 to 348, inclusive, have been ruled out of order.

Amendments Nos. 344 to 348, inclusive, not moved.

**Deputy Kathleen Funchion:** I move amendment No. 349:

In page 57, after line 9, to insert the following:

**“Adoption Advisory Group**

**67.** The Minister shall convene a permanent Adoption Advisory Group to inform the operation of this Act. The group shall be comprised of:

- (a) at least two representatives from groups advocating on behalf of relevant persons;
- (b) at least two representatives from groups advocating on behalf of relevant persons who were adopted from Ireland to another country;
- (c) at least two representatives from groups advocating on behalf of relevant persons from another country to Ireland;
- (d) at least two representatives of groups advocating on behalf of parents.”.

Amendment put and declared lost.

Schedule agreed to.

**TITLE**

**Deputy Holly Cairns:** I move amendment No. 350:

In page 7, line 5, to delete “further and better”.

Amendment put and declared lost.

**Deputy Holly Cairns:** I move amendment No. 351:

In page 7, line 5, after “to” where it secondly occurs to insert “their personal data and”.

Amendment put and declared lost.

**Vice Chairman:** Amendments Nos. 352 and 352a cannot be moved. Amendment No. 353 has been ruled out of order.

Amendments Nos. 352 to 353, inclusive, not moved.

**Deputy Holly Cairns:** I move amendment No. 354:

In page 7, line 9, to delete “, where such persons are deceased,”.

Amendment put and declared lost.

**Deputy Holly Cairns:** I move amendment No. 355:

In page 7, lines 9 and 10, to delete “in certain circumstances”.

Amendment put and declared lost.

**Deputy Holly Cairns:** I move amendment No. 356:

In page 7, line 15, to delete “certain” where it firstly occurs and substitute “all available”.

Amendment put and declared lost.

**Vice Chairman:** Amendment No. 357 cannot be moved. Amendment No. 358 is out of order and cannot be moved. Amendments Nos. 359 and 359a cannot be moved. Amendment No. 360 is out of order and cannot be moved.

Amendments Nos. 357 to 360, inclusive, not moved.

Title agreed to.

Bill reported with amendments.

**Vice Chairman:** I thank the Minister, Deputy O’Gorman, and his officials for attending today and the previous days and for engaging with the committee.

**Deputy Kathleen Funchion:** I sincerely thank our Vice Chairman, Deputy Costello, for stepping up and taking the role of Chair.

**Vice Chairman:** How did Deputy Funchion get my lines confused on one or two occasions?

**Deputy Kathleen Funchion:** There were a large number of amendments and the Vice Chairman handled them very well. I thank him.

### Message to Dáil

**Vice Chairman:** In accordance with Standing Order 101, the following message will be sent to the Clerk of the Dáil:

The Select Committee on Children, Equality, Disability, Integration and Youth has completed its consideration of the Birth Information and Tracing Bill 2022 and has made amendments thereto.

The select committee adjourned at 9.40 p.m. *sine die*.