



Tithe an  
Oireachtas  
Houses of the  
Oireachtas

**An Coiste um Leanaí, Comhionannas,  
Míchumas, Lánpháirtíocht agus Óige**  
Tuarascáil maidir leis an nGrinnscrúdú Réamhrechtach  
ar Scéim Ghinearálta an Bhille um Adhlacthaí  
Institiúideacha Áirithe (Idirghabháil Údaraithe)

Iúil 2021

**Joint Committee on Children, Equality,  
Disability, Integration and Youth**  
Report on pre-legislative scrutiny of the General Scheme of a  
Certain Institutional Burials (Authorised Interventions) Bill





**Tithe an  
Oireachtais  
Houses of the  
Oireachtas**

***TITHE AN OIREACHTAIS***

**AN COMHCHOISTE UM LEANAÍ, COMHIONANNAS, MÍCHUMAS,  
LÁNPHÁIRTÍOCHT AGUS ÓIGE**

**Tuarascáil maidir leis an nGrinnscrúdú Réamhrechtach ar Scéim  
Ghinearálta an Bhille um Adhlacthaí Institiúideacha Áirithe (Idirghabháil  
Údaraithe)**

**Iúil 2021**

---

***HOUSES OF THE OIREACHTAS***

**JOINT COMMITTEE ON CHILDREN, DISABILITY, EQUALITY,  
INTEGRATION AND YOUTH**

**Report on pre-legislative scrutiny of the General Scheme of a Certain  
Institutional Burials (Authorised Interventions) Bill**

**July 2021**

**CDEI 33 004**



## Contents

<b>PREFACE</b> .....	1
<b>INTRODUCTION AND LIST OF WITNESSES</b> .....	2
<b>BACKGROUND</b> .....	5
<b>KEY ISSUES WITH THE PROPOSED LEGISLATION</b> .....	6
<b>KEY ISSUE 1:</b> Are there too many conditions to be met and restrictions which must not apply before an intervention can be made?.....	6
<b>KEY ISSUE 2:</b> Should the Coroner have a greater role in the General Scheme? .....	10
<b>KEY ISSUE 3:</b> Should there be a requirement for a wider consultation with affected groups about the most appropriate way of dealing with remains which are to be re-interred?.....	12
<b>KEY ISSUE 4:</b> Departmental Archiving - 30-year provision? .....	13
<b>KEY ISSUE 5:</b> Role of the adjudicator .....	14
<b>KEY ISSUE 6:</b> DNA issues and provisions for the identification of deceased persons....	15
<b>KEY ISSUE 7:</b> Timelines and cost.....	18
<b>KEY ISSUE 8:</b> Obligations under domestic, EU and international law, treaties and protocols .....	19
<b>KEY ISSUE 9:</b> Provisions for greater transparency, accountability and right to appeal	21
<b>KEY ISSUE 10:</b> Facilitating conflicting views among groups, survivors and family .....	22
<b>RECOMMENDATIONS</b> .....	23
<b>APPENDIX 1 - ORDERS OF REFERENCE</b> .....	31
<b>APPENDIX 2 - COMMITTEE MEMBERSHIP</b> .....	35
<b>APPENDIX 3 – LINKS TO MEETING TRANSCRIPTS</b> .....	36
<b>APPENDIX 4 – LINKS TO SUBMISSIONS &amp; OPENING STATEMENTS</b> .....	36
<b>APPENDIX 5 – Bibliography / recommended reading</b> .....	37



## PREFACE



Following publication of the report of the Commission of Investigation into Mother and Baby Homes in January, the Committee agreed, as an absolute priority, to progress work on any legislation arising from the report. On 12 January 2021, the Minister for Children, Disability, Equality, Integration and Youth referred the General Scheme of the Certain Institutional Burials (Authorised Interventions) Bill to the Joint Committee on Children, Disability, Equality Integration and Youth, in accordance with Standing Orders, for the purpose of pre-legislative scrutiny of the General Scheme.

The purpose of the Bill is to provide ‘the statutory basis and framework under which Government may decide to authorise interventions at certain sites where manifestly inappropriate burials have taken place associated with institutions operated by or on behalf of the State or in respect of which the State had clear regulatory or supervisory responsibilities’, and for the establishment of an Agency to carry out such interventions.

The Committee sought the input of the public, survivors and their families, survivor groups, legal experts, academics and experts in the field of DNA and others, to try to establish how best to strengthen this legislation. Despite the constraints of Covid-19 and the challenges it brought, we received huge input into the process, through submissions, correspondence and witnesses appearing before the Committee. The Members of the Committee are grateful to everyone who engaged with it to assist in the scrutiny of the proposed legislation.

Members of this Committee are united in its desire to ensure justice for the survivors of Mother and Baby Homes. I hope this Bill will be a step in the right direction. We implore the Minister, the Department and the Bill’s drafters to give the recommendations provided in this report serious consideration. Individuals both directly and indirectly involved in issues around these Homes have had the strength to tell their stories in many forums over many years, often to be met with inaction. They should no longer have to fight for justice. We have the evidence from the Mother and Baby Homes Commission of Investigation. We have testimony from the Pre-Legislative Scrutiny process. Now the onus is on everyone else involved in this area to deliver for families and survivors as quickly and effectively as possible.

To aid in this, the Committee has identified key issues and arrived at several recommendations. The Committee hopes these will assist and inform the Government in strengthening the proposed legislation and will help the Bill deliver more for families, survivors and the public.

Finally, to those who contributed to the pre-legislative scrutiny process, my sincere thanks. I also want to acknowledge the individuals who may have been affected by these institutions and who felt they could not come forward and engage with this process, and hope that the engagement of this Committee will help you in some way to find comfort. I also want to thank the staff of the Secretariat and the Library and Research Service for all their assistance in preparing this report. I wish also to acknowledge the dedication and professionalism shown by all the Members of the Committee in their engagement with witnesses.

A copy of the report has been sent to the Minister for Children, Disability, Equality, Integration and Youth.

A handwritten signature in blue ink that reads "Kathleen Funchion".

---

Kathleen Funchion T.D.  
Cathaoirleach  
15 July 2021

## INTRODUCTION AND LIST OF WITNESSES

The General Scheme of a Certain Institutional Burials (Authorised Interventions) Bill was referred to the Joint Committee on Children, Disability, Equality Integration and Youth ('the Committee') on 12 January 2021. The Committee agreed at its meeting on 19<sup>th</sup> of January 2021 to undertake pre-legislative scrutiny of the General Scheme.

The Committee engaged with various stakeholders at pre-legislative scrutiny meetings, detailed below. The Committee also issued a public call for submissions and invited a number of relevant stakeholders to make written submissions on the General Scheme and these are linked in Appendix 5.

### **Wednesday 14 April 2021**

#### **Session Number 1 - 9:30 am -11:30 am**

- Ms. Catherine Corless
- Ms. Susan Lohan
- Ms. Mary Harney
- Mr. Phil Scraton, Professor Emeritus, School of Law - Queen's University Belfast
- Dr Maeve O'Rourke, Lecturer in Human Rights - NUI Galway

#### **Session Number 2 – 12 noon to 2:00 pm**

##### **Part A - Irish Human Rights and Equality Commission**

- Professor Ray Murphy, Commission Member
- Ms. Sinead Fitzpatrick, Senior Policy and Research Officer

##### **Part B - Irish Council for Civil Liberties**

- Ms. Doireann Ansbro, Head of Legal and Policy
- Ms. Elizabeth Carthy, Policy Officer

#### **Session Number 3 – 3:00 pm – 5:00 pm**

##### **Tuam Home Survivors Network**

- Mr. Kevin Higgins
- Mr. Peter Mulryan

##### **Know Your Own**

- Mr. Martin Parfrey

##### **Cork Survivors and Supporters Alliance**

- Mr. David Dodd BL



## **KOD Lyons**

- Mr. Stephen Kirwan LLB

## **Session Number 4 – 5:30 – 7:30**

- Mr. Stephen Donoghue PhD, MSc, LLB
- Associate Professor Jens Carlsson
- Dr Niamh McCullagh, Forensic Archaeologist
- Mr. Aidan Harte, Forensic Archaeologist
- Ms. Anna Corrigan
- Mr. Carl Buckley BL

## **Tuesday 27 April 2021**

### **Representatives from the Collaborative Forum**

- Ms. Alice Coughlan
- Ms. Amanda Larkin
- Mr. Sidney Herdman

### **Aitheantas**

- Ms. Maree Ryan-O'Brien
- Mr. Rody O'Brien BL, Legal Counsel

## **Tuesday 18 May 2021**

### **Department of Children, Equality, Disability, Integration & Youth**

- Mr. Roderic O'Gorman T.D., Minister for Children, Equality, Disability, Integration & Youth
- Ms. Dara Breathnach, Official from Department of Children, Disability, Equality, Integration and Youth

The Committee met with the Minister and his officials on two other occasions, separate to these designated pre-legislative scrutiny meetings:

- 2 February 2021, in private session, for an informal briefing on the General Scheme
- 16 February 2021, in public session, to discuss the Report of the Commission of Investigation into Mother and Baby Homes

The Committee would like to thank the Minister and his officials for their time and assistance.

### **Definition of Mass Graves versus Communal Graves**

According to the most recent report of a UN Special Rapporteur, a mass grave is a burial site where the "circumstances surrounding the death and/or the body-disposal method warrant an investigation as to their lawfulness." The Special Rapporteur adds that "Mass graves conceal the individual identities of those whose remains they contain." The Bournemouth Protocol states meanwhile that a mass grave, while and quote; "undefined in international law" is "used here to mean a site or defined area containing a multitude (more than one) of buried, submerged or surface

scattered human remains (including skeletonised, commingled and fragmented remains), where the circumstances surrounding the death and/or the body- disposal method warrant an investigation as to their lawfulness.” Taking into account the contents of the Mother and Baby Homes Commission of Investigation Report and the manner of the burials at Tuam among other sites, it is possible that the site at Tuam and potentially others constitutes a mass grave site. Throughout this report the term used is communal graves, this is without prejudice to this possibility. A mechanism should be put in place to determine whether the threshold of prescribing a site as being a mass grave has been reached.

## BACKGROUND

Following controversy relating to burial practices at the Bon Secours Mother and Baby Home in Tuam, Co. Galway, a Commission of Investigation (Mother and Baby Homes and certain related matters) was established in February 2015 under the Commission of Investigation Act 2004 and S.I.57/ 2015.

The Commission of Investigation submitted its final report on 30th October 2020, and it was published on 12th January 2021 by the Department of Children, Equality, Disability, Integration and Youth.

The final report stated the following in relation to the Tuam Mother and Baby Home:

*“Child deaths: 978 children who were in Tuam or Glenamaddy died; 80% were under a year, and 67% were aged between one and six months. Three-quarters of the deaths happened in the 1930s and 1940s; the worst years were 1943-1947.*

*Burials: No register of burials was kept, and it is likely that most of the children who died in Tuam are buried inappropriately in the grounds of the institution.”*

The Government has committed to a number of actions in light of the information found by the Commission of Investigation, grouped around eight themes. These include:

- Providing an enhanced medical card to all former residents of Mother and Baby Homes and County Homes (where they were resident for a period of more than six months);
- Advancing Information and Tracing Legislation to pre-legislative scrutiny (PLS) in 2021 in respect of birth and early life information for those survivors who wish to access it, including those children who were adopted and boarded out;
- Advancing burials legislation to support the excavation, exhumation and, where possible, identification of remains, and their dignified reburial through the General Scheme of the Certain Institutional Burials (Authorised Interventions) Bill; and
- Establishing national and local memorials, an annual commemoration and a national memorial centre, among other actions.

In considering the General Scheme the following reports may be considered useful:

- “Human Rights Issues at the Former Site of the Mother and Baby Home, Tuam, Co. Galway” a report by the Special Rapporteur for Children Dr. Geoffrey Shannon; and
- The Expert Technical Group Report on the site of the former Tuam Mother and Baby Home.

Further resources of note for those drafting the final version of this legislation are signposted throughout this report and listed in the bibliography.

The Expert Technical Group Report states that:

*“The situation in Tuam is an unprecedented one for the agencies that usually deal with medico-legal death investigations in Ireland. The group has not identified any directly comparable cases, either nationally or internationally, that involve the complexities of commingled juvenile human remains, in significant quantities and in such a restricted physical location.*

*There are a number of factors that make this situation unique:*

*The forensic requirement of the site;*

*The ‘significant’ quantities of juvenile remains;*

*The commingled or intermixed state of the remains;*

*The position of the remains within subsurface chambers, with limited access.”*

## KEY ISSUES WITH THE PROPOSED LEGISLATION

Stemming from its engagement with stakeholders, the Committee have identified a number of key areas of concern in the General Scheme and have made recommendations as to how these should be remedied.

### KEY ISSUE 1: Are there too many conditions to be met and restrictions which must not apply before an intervention can be made?

All of the recommendations set out below are made fully cognisant of the fact that the Expert Technical Group noted particular difficulties with the exhumations at Tuam. It is acknowledged that there are appropriate communal<sup>1</sup> burial plots across the country and in such cases it is not proposed that these would be excavated for exhumations save in exceptional circumstances when there is a question as to the cause of death and identity of the deceased.

In its current form the Bill will likely have the effect of preventing meaningful intervention at most sites. Part 2 of the General Scheme deals with making an order to intervene in a burial site. There are a substantial number of conditions that must be met, as well as many which must not apply before an order to intervene can be made. The Minister must also take a list of factors into account in considering the proportionality of any intervention.

The first set of conditions sets out that Head 3 of the General Scheme (making a Government order) will only apply where the relevant (sponsoring) Minister is satisfied, on reasonable grounds, that manifestly inappropriate burials have taken place at a site, associated with an institution, of persons who died while ordinarily resident at that institution. The sponsoring Minister must also obtain the approval of the Minister for Public Expenditure and Reform in order to propose the establishment of an Agency.

The Government can order the establishment of an Agency where it forms the view that it is necessary to safeguard important objectives of general public interest, and where the criteria required for intervention in Head 5 are met, but the circumstances outlined in Head 6 (restrictions) do not apply.

Together, these requirements and restrictions make the circumstances in which interventions can take place very limited. The vast majority of stakeholders the Committee engaged with are of the view that the Bill is too restrictive and had anticipated much more scope to intervene at sites and to obtain information about where their loved one is and how they died.

---

<sup>1</sup> According to the most recent report of a UN Special Rapporteur, a mass grave is a burial site where the “circumstances surrounding the death and/or the body-disposal method warrant an investigation as to their lawfulness.” The Special Rapporteur adds that “Mass graves conceal the individual identities of those whose remain they contain.” The Bournemouth Protocol states meanwhile that a mass grave, while and quote; “undefined in international law” is “used here to mean a site or defined area containing a multitude (more than one) of buried, submerged or surface scattered human remains (including skeletonised, commingled and fragmented remains), where the circumstances surrounding the death and/or the body- disposal method warrant an investigation as to their lawfulness.” Taking into account the contents of the Mother and Baby Homes Commission of Investigation Report and the manner of the burials at Tuam among other sites, it is possible that the site at Tuam and potentially others constitutes a mass grave site. Throughout this report the term used is communal graves, this is without prejudice to this possibility. A mechanism should be put in place to determine whether the threshold of prescribing a site as being a mass grave has been reached.

In its current form the Bill focuses only on inappropriate burials as the basis for intervention. Although stakeholders are appalled at the conditions loved ones may be buried in, they are generally far more concerned about how their family member died and where they are, not how they were buried. While the focus is on burials in this Bill, we also need to consider the principles of transitional justice: justice, reparation, truth-telling and guarantees of non-recurrence. In April 2017 the Department of Children and Youth Affairs committed to a transitional justice approach to the issue of Mother and Baby Homes and in the intervening period has taken a number of specific initiatives to facilitate this.

The majority of stakeholders appearing before the Committee were of the view that if the Government can obtain land for infrastructure via Compulsory Purchase Order (CPO), then it should also do so for the very serious reasons surrounding the burials discussed during this Pre-legislative Scrutiny process.

### **Recommendations**

The Committee recommends that:

1. The focus of the Bill should be on victims and survivors and their rights. The Bill should not limit the extent to which the various sites can be investigated.
2. While the Committee notes that there are serious concerns regarding the procedure followed by the Mother and Baby Homes Commission of Investigation and the subsequent report, there were alarming instances of high mortality rates and inadequate records of burials and deaths discovered. For example, the Commission found that in Tuam no register of births was kept. The only known burial records relate to burials in external cemeteries and only in instances of hospital deaths. The Commission found that it is 'likely that most of the children who died in Tuam are buried inappropriately in the grounds of the institution'; Human remains were found in a 'structure with 20 chambers...built within the decommissioned large sewage tank'; it was not established that all children who died are buried here; there is some evidence of possible burials in other parts of what were the grounds. The Commission considered it likely that a large number of burials took place on the former Tuam institution site, particularly beneath a current memorial garden. It is essential that the General Scheme of this Bill focuses on fully investigating these discrepancies, including but not limited to the means of the proposed Agency, the Attorney General and an Garda Síochána. Survivor advocacy groups and stakeholders expressed in submissions to the Committee that proper investigation and accountability is what is necessary, and that this must go beyond the rhetoric of 'healing' and apologies.
3. The Bill and the General Scheme of this Bill should be revised to ensure human rights is paramount in every provision therein. Institutional burials and communal grave sites give rise to violations of the most fundamental human rights within the recognised hierarchy of human rights including the right to equality, the right to life, and freedom from torture and degrading treatment. These rights stem both from international human rights standards and the Irish Constitution. The Committee recommends that the matter of constitutionality and the avoidance of constitutional challenges raised by the Minister during his appearance before the Committee be considered in this regard
4. The 70-year time limit should be removed. The Commission of Investigation into Mother and Baby Homes examined the period of 1922 to 1998, so the rationale for this statute of limitations is unclear. Pre-1950 burial sites should not be excluded (Head 6,6, B).

5. The scope of the General Scheme be revised to include any burial site where the circumstances surrounding the death and/or body-disposal method warrant an investigation as to their lawfulness.
6. That intervention should give due consideration to suspicious or unlawful deaths as well as the existence of inappropriate burials.
7. Heads 3, 5 and 6 should be revised to ensure the proposed legislation has due regard for protection of human rights of both victims and family members. This Bill must be founded in international human rights standards and embody the principles of transitional justice, namely: justice, reparation, truth-telling, and guarantees of non-recurrence. For example, the European Court of Human Rights has accepted the right to respect for private and family life as providing a number of rights for family members of deceased persons. These include the right to information about the death and/or burial of a family member.<sup>2</sup> Under the ECHR Act 2003, this applies directly to matters of Irish law.
8. Restrictions placed on intervention in communal grave sites relating to property rights and access should be minimised within the Bill. The Committee notes it is striking that the only mention of rights in this General Scheme is the reference to property rights of landowners of burial sites. There is no mention of the rights of the deceased or their family members, which should be at the centre of this Bill. These obligations on the State arise from human rights standards and fundamental rights under the Constitution.
9. Efforts to address the priority of one set of rights above another must be made to avoid conflict with constitutional rights of persons affected. While the Minister informed the Committee that property rights are positioned so centrally in this Bill so as to have a balancing mechanism built-in to avoid constitutional challenges, the Committee are of the view that there can be a stronger balancing of the rights of family and survivors against those of landowners/proprietors in the legislation. Efforts should be made to prioritise the rights of family and survivors in this legislation.
10. Head 28 should be amended to remove sub-head (4). Given the time elapsed, it is entirely possible that housing developments have been constructed over all or part of a relevant site. However, sub-head (5) addresses this issue by permitting the Agency to make an application to the District Court to access lands in residential use, outlining that 'a judge of the District Court may, by order, grant an Agency access and all necessary rights to and over such lands for so long as is necessary for that Agency to carry out the functions assigned to it'. The Committee notes this is an effective remedy to the delicate issue as it leaves the decision as to what is 'necessary' with a judge in accordance with the ordinary legal procedure and the rule of law in this jurisdiction. Again, the rights of the victim or survivor need to be balanced with that of the owner and/or occupant, having regard to the relevant obligations under Article 2, 3, and 8, of the ECHR. It is ordinarily within the jurisdiction of the Court to interpret this balance as necessary.
11. A full review of the qualifying criteria for intervention must be conducted. A high volume of conditions and restrictions may prohibit Government to act to facilitate exhumations, examinations, identification and investigation.
12. The restrictions and tests set out in the proposed Bill could have the effect of precluding the establishment or action of an Agency in key sites such as Bessborough and Sean Ross Abbey, contrary to the views of the vast majority of stakeholders who engaged with the

---

<sup>2</sup> Hadri Vionet v. Switzerland Number 55525/00, 14 February 2008.

Committee. The Government should consider what is known about the Mother and Baby Home sites from the Final Report of the Mother and Baby Homes Commission of Investigation, among other sources.

13. A provision should be included under Head 9 to ensure the scope of the Agency to intervene extends to burial sites at all Irish institutions, including but not limited to: public and privately owned, Catholic and Protestant/Church of Ireland institutions and all other sites which are known to be associated with an institution.
14. A) Following the completion of the exhumations at Tuam, a full review should be undertaken regarding the tests and criteria for intervention, including the mechanism whereby a decision to intervene at any site is made, and such report should be acted upon with a view to amending the legislation if necessary. This review should be laid before both houses of the Oireachtas and the relevant Oireachtas committee.  
B) While the Minister is powered with the decision to intervene, this should be done in consultation with the relevant authorities and the independent Agency. An appeals mechanism should also be in place. The relevant Minister and the Agency would be obliged to come before the relevant Oireachtas committee to defend and explain a decision to intervene or not intervene.
15. Head 6(10) should be amended to oblige the Government to intervene when the criteria and tests for intervention have been met. Memorialisation should complement this process. Compulsory purchase should be included for when all other avenues have been exhausted.
16. Head 6(3) should be removed. It states that sites are to be excluded from the Government order where *“there is an ongoing Garda investigation into the circumstances surrounding the burials or the way the deaths took place”*.
17. Inadequacy of records or suspicions around falsified records should warrant further enquiry regarding the possibility that a site may require investigation. The decision to excavate will be taken in accordance with the statutory tests.
18. Head 25 (1) should be amended to remove the word may. The use of the word ‘may’ suggests that a relevant body, including a religious order, can refuse to disclose information or records, without there being any apparent framework within which such a decision can be taken. The justification for this is unclear. To enable any investigation to be credible, the Agency must have full and complete powers to request and receive documentation relevant to the site. The phrase ‘has a duty to’ should replace ‘may’.
19. Head 25 should be further amended to include the power to compel a body to disclose requested information. It is not appropriate that the Agency is powerless in the face of a refusal to cooperate and it undermines the very function of that Agency’s mandate. The Committee notes that the Commission has obtained a complete copy of all HSE records and that the proposed Agency must be empowered to obtain the same.
20. Given that the Adoption Heads of Bill do not provide a right to all records of a relative who died in an institution, this Bill must provide such a right.

## KEY ISSUE 2: Should the Coroner have a greater role in the General Scheme?

Coroners have had jurisdiction over the investigation of unexplained or unnatural deaths in Ireland since before independence. The General Scheme as currently drafted temporarily disappplies other legislation which gives the power to exhume. It takes away the jurisdiction of a Coroner to deal with bodies exhumed from the specified site unless the remains found do not appear to be in the scope of the General Scheme. The Minister stated in his contribution to the Committee during pre-legislative engagement that the logic for this was because two departments or agencies cannot have jurisdiction at the same time.

It is reasonable to anticipate the excavation of a site may result in remains being found which do not have a notified cause of death. The role of the Coroner is to enquire into the circumstances of sudden, unexplained, violent and unnatural deaths. This may require a post-mortem examination sometimes followed by an inquest. The appointment of an Agency Coroner should be considered, with the necessary additional powers and duties to comply with Ireland's European human rights law obligations. These additional coronial powers to trigger independent investigation duties include dedicated infrastructure, full disclosure obligations, a mandatory requirement for publication of findings and full involvement of families. To date no investigation has taken place into the cause of these deaths and it is families' request that this Bill does that.

The controversy surrounding the role of the Coroner in this Bill is rooted in the mismatch between what much of the public, survivors, and families seem to want it to do and what the Department has stated it will it to do. The main problem stakeholders identified in the Bill is the lack of commitment to investigate 'how' individuals died. The Minister informed the Committee that that is not the intention of the proposed legislation. However, most stakeholders strongly advised the Committee that the 'how' must be investigated. Minister O'Gorman confirmed that the legislation is primarily designed to address manifestly inappropriate burials only and identification, where possible. As such, if the legislation progresses in its current form and is not significantly amended to include investigations into 'how', then other actions must be taken as soon as possible to establish the 'how'.

It was put by several witnesses that currently when taken together Head 7 read in conjunction with Heads 29 and 31 could effectively create an either/or situation whereby the remains of individuals who died in institutional settings will either fall within the scope of this Bill and not be subject to inquests or they will remain within the Coroner's jurisdiction and may never be subject to inquests. A system of enquiry should be established to investigate the *how* and *why* they died, to run coterminous with the exhumation identification and dignified reburial process.

### Recommendations

The Committee recommends that:

21. The Minister needs to address the overwhelming need to know how the deceased died and their cause of death. The appointment of an Agency Coroner should be considered, with the necessary additional powers and duties to comply with Ireland's European human rights law obligations. These additional coronial powers to trigger independent investigation duties include dedicated infrastructure, full disclosure obligations, a mandatory requirement for publication of findings and full involvement of families.



22. The Department of Children, Disability, Equality, Integration and Youth and the Department of Justice should cooperate on all matters contained in this Bill and on all matters where cooperation is required to action the recommendations contained here.
23. The institutions in the Mother and Baby Homes Commission of Investigation Report, for the purposes of this Bill, should be deemed as having suspicious circumstances surrounding deaths and suspected criminal activity.
24. There was a strong view that there is enough evidence from the Mother and Baby Homes Commission of Investigation Report to trigger coronial investigations into how individuals in institutions died. This bill should not, in any form, delay that important work. The Committee notes that there was no Coroner's inquiry instigated in accordance with normally accepted practice following the discovery of the communal grave in Tuam, having regard to the fact that there were at minimum potential offences committed under (i) section 11 of the Maternity Act 1934 and (ii) the Local Sanitary Services Act 1948. Furthermore, no individuals have been questioned regarding the absence of a medical certificate for the death of any child, despite obligations to do so under section 18 of the Coroner's act 1962.
25. The Bill should be amended to include a provision that emphasises the existing legal obligation for any person who has information or suspicion of potential criminal activity to report this information to the relevant authorities and underlines that those authorities are legally obliged act on the information received.
26. The General Scheme must be amended to include a definition for what is to be considered manifestly inappropriate under the Bill.

**KEY ISSUE 3: Should there be a requirement for a wider consultation with affected groups about the most appropriate way of dealing with remains which are to be re-interred?**

The Committee fully acknowledge that the Expert Technical Group Report emphasises that identification and restoration of all human remains at Tuam may not be possible. All of the following comments and recommendations are made with that caveat borne in mind.

Minister Zappone had committed to a transitional justice model for addressing issues around Mother and Baby Homes and inappropriate burials. Dr Geoffrey Shannon and others underlined the importance of this during the previous Government's examination of these issues and that model was championed again during the pre-legislative scrutiny of the Bill this year. Minister O'Gorman has maintained that his Department is committed to such an approach and has spoken regularly about the need to give survivors a central place in the process. Most family members and survivors justifiably feel they have never truly been accommodated or informed. Every single stakeholder who took part in the pre-legislative scrutiny meetings with this Committee underlined the importance of listening to survivors and family members. The State must now show due respect to them by building their participation into this legislation.

**Recommendations**

The Committee recommends that:

27. Currently Head 33(1) reads "Where the Agency has exhumed remains or caused remains to be exhumed under Head 29, it shall, in consultation with the Sponsoring Minister, make such final arrangements for the remains as it deems most appropriate...". It is not for the Agency alone to determine what is appropriate. Survivors and family must be involved. Their involvement in the decision-making process around remains found at a site should be paramount in Head 33, not mentioned briefly in 33(3)(B).
28. Head 33 should be revised to place a statutory duty on the State to return, on request and without delay, the identified human remains and personal artefacts to families once intervention and identification has been completed. This must be done in a manner that facilitates informed consent of the process of identifying remains, which is outlined in key issue 6 below and which is detailed in Geoffrey Knupfer's submission to the Committee.
29. Head 33 should be amended to include a duty on the State to bury the remains in a specified location only and in a manner that respects the religious or cultural belief of the deceased, and where relevant that this occurs in close consultation with family members.
30. There should be a requirement for a wider consultation with affected groups and extended family members about the most appropriate way of dealing with remains which are to be re-interred.
31. The wishes and rights of survivors and family members should be given due regard and weighted over other factors insofar as is feasibly possible.
32. There should be provisions in the legislation for survivors and family members to be kept informed, on an ongoing basis, about the process as it relates to their family member's remains. The commitment to keep the family of the deceased informed should be stipulated in Head 33.

## KEY ISSUE 4: Departmental Archiving - 30-year provision?

### Recommendations

The Committee recommends that:

33. This head/provisions should be worded so that it is clearly without prejudice to survivors' and relatives' rights in respect of GDPR, FOI, Birth Information and Tracing.

## KEY ISSUE 5: Role of the adjudicator

There should be a right to appeal against a decision by an adjudicator. Furthermore, based on the General Scheme as written, the adjudicator does not appear to be sufficiently independent. They are appointed by the Director and there is no provision currently that they be independent in their functions. The independence from Government of those making decisions about efforts to investigate the deceased is key to rebuilding trust and accountability for survivors and family members.

### **Recommendations**

The Committee recommends that:

34. Head 67 should be amended so that it is not the Agency that appoints the adjudicator, but it is the Coroner or some other entity yet to be identified, such as the Consultative Committee which will include families, who does so.
35. The Agency Coroner should have a statutory observer role with powers to invoke the coronial jurisdiction onsite when relevant.

## KEY ISSUE 6: DNA issues and provisions for the identification of deceased persons

All of the recommendations set out below are made fully cognisant of the fact that the Expert Technical Group noted particularly difficulties with the exhumations at Tuam.

It is acknowledged that the Minister stated that he was not intending to limit the identification of the human remains to DNA markers only but that he is open to exploring other methodologies. The Committee received valuable submissions and heard evidence from internationally renowned experts working with INTERPOL and the International Commission on Missing Persons, among others. The plans for the DNA programme as outlined in the General Scheme currently vary profoundly from what those experts recommend.

Provisions relating to the DNA programme are too restrictive in parts and too vague in others. Some may have unintended consequences. For example, the effect of provisions in Head 53 could be to create a gatekeeper in families, with the power to grant or refuse access to other family members to participate in the identification programme. Such a hierarchy is likely to be the source of some upset and distress for many survivors and their families. In circumstances where a parent of the deceased person does not give consent but a half-sibling of the deceased person is not the child of the parent refusing consent, a half sibling would be given access to participate in the identification programme, where a full sibling would not. Such circumstances are likely to be rare but should be avoided.

The procedure of identifying remains under Head 33 and the margin of error of its outcomes must be communicated to families of the deceased. The non-release of marginal identifications and similarities could conceivably lead to disagreement, acrimony and possibly even legal challenge.

There is a narrow focus in the Bill on DNA. There is no mention of forensic anthropologists, although the Agency is also empowered to hire consultants or specialists. It is essential for Coroners or someone with Coronial expertise and a multidisciplinary team to be onsite to be able to tell whether there has been violent or unnatural circumstances. Forensic anthropologists and the requisite multidisciplinary teams would need to ascertain whether there is trauma or bone malformation and so on. By removing the Coroner and not explicitly committing to a multidisciplinary approach it is difficult to envisage how violent or unnatural circumstances would be picked up, or how an actual criminal investigation could be triggered. Samples taken without a Coroner and the requisite multidisciplinary teams present could be compromised in terms of their ability to establish how an individual died or whether there was any wrongdoing.

The broader the analysis and the more varied expertise there is, the more likely a successful outcome. The Minister informed the Committee that much of that will come about in terms of the administration of the Agency. It is important that this forms part of the review that the committee recommends takes place on the completion of Tuam, as it will be the first opportunity for the Agency to demonstrate that ability.

It does not appear to be consistent with the desire for identification that biological samples and DNA profiles be destroyed in the short period allocated. It is difficult to understand the reasoning for this, especially if the appropriate informed consent is obtained from the potential family members. The lack of a match may be rectified by new technology in the future and therefore it is inappropriate to destroy the samples, when the purported intention is to identify individual remains.

Best international practice should be adhered to in respect of all attempts for identification of human remains. Any failure to include this provision in the General Scheme may undermine the

legitimacy of the process and would depart from expert, internationally recognised standards. There are a number of suggested amendments that need to be made to ensure best efforts in terms of identification.

The steps between excavation or exhumation of remains and subsequent sampling for DNA analysis are missing from the General Scheme and should be included and committed to in the Bill. These are crucial best practice steps before any destructive sampling of remains should be undertaken and are recognised in the international forensic context by all forensic practitioners regularly involved in human remains work. They can also be found in Dr Gapert's submission to the Committee, in the INTERPOL protocol for Disaster Victim Identification (DVI)<sup>3</sup> and standard texts on forensic human identification and mass fatality and mass graves investigations.

### **Recommendations**

The Committee recommends that:

36. The Coroner needs to be involved in any human remains analysis. Having no independent oversight of the death investigation process through the office of the Coroner is dangerous and leaves an important aspect of investigating the deaths out.
37. Best international practice should be adhered to in respect of all attempts for identification of human remains.
38. The Department should be cognisant of the submissions the Committee received from DNA experts.
39. All timelines, in Head 65 and elsewhere, relating to the time that can elapse before the destruction of DNA samples from both the bodies and potential family members should be drastically lengthened.
40. A multidisciplinary approach must be engaged. All relevant professional disciplines should be engaged to ensure the best possible outcome in terms of identification of the human remains, the arbiter of relevance should be the Coroner or Coronial expert engaged by the Agency, with an appeal possible to the adjudicator.
41. The Bill should explicitly commit to using the best techniques possible.
42. The Department should engage with third-level institutions with relevant expertise in this area to incorporate their knowledge and capabilities into the workings of the identification programme, the workings of Forensic Science Ireland on this and into any Coronial and criminal investigations undertaken in relation to deaths at Mother and Baby Homes.

---

<sup>3</sup> <https://www.interpol.int/en/How-we-work/Forensics/Disaster-Victim-Identification-DVI>

43. Delays in beginning the collection of DNA have been attributed to COVID-19. However, due to the success of the vaccination roll-out this work should begin immediately and be intensely resourced.
44. A multidisciplinary approach must be engaged. All relevant professional disciplines should be engaged to ensure the best possible outcome. The arbiter of relevance should be the Coroner or Coronial expert engaged by the Agency, with an appeal possible to the adjudicator.
45. Information about the techniques and professions involved in, and steps taken to identify remains and investigate what happened individuals at a site should be publicly published at regular intervals during:
  - A. the decision-making process around deciding to intervene at a site; and
  - B. during the intervention and the work of the Agency.(Without prejudice to any criminal investigation)
46. The decision not to engage certain disciplines or use certain techniques must be published with explanation, this includes the decision of the adjudicator.
47. Best international practice should be adhered to where a decision in respect of a pilot programme is in dispute. Appeals may be made to the independent adjudicator.
48. Head 51 should be amended to provide further clarity on what a 'reasonable prospect' is and the threshold for this should not be overly high or it will prevent identification programmes at sites where they may be warranted.
49. Head 53 (2) should be amended such that, aside from half-siblings, other second order relatives, including grandchildren, uncles, aunts, nephews and nieces may participate in the Identification Programme.
50. Head 62 should be amended to clarify the purpose, structure, and scope of the review into the operation of Part 6. This should include an explicit requirement to review the operation after a set period of time. Any such review should include the meaningful participation of families, groups representing survivors and families, persons with human rights and data protection expertise, and other relevant persons or groups.
51. Head 53 should be amended so that there is no hierarchy of access to participation in the identification programme. All first and second order relatives should have equal access to participate.
52. Head 25 should be amended to legally oblige any public body to disclose information, records or documents in its possession to the Agency relating to the Agency's functions. "Any public body *may*..." should be replaced with "any public body *must*..." here. (Head 25, 1). Furthermore, there should be a legal obligation to disclose similar information about deaths in Mother and Baby Homes to the authorities generally.

## KEY ISSUE 7: Timelines and cost

Certain provisions in the Bill provide deadlines that are unreasonably long; certain provisions do not provide any timelines. Many family and survivors are aging, so there is an urgency associated with all actions and legislation around Mother and Baby Homes and similar institutions. This should be reflected in the Bill.

If all actions associated with Mother and Baby Homes are not now taken wholeheartedly, in line with international human rights and other laws and the principles of transitional justice, then, these issues will need to be revisited again and again in a piecemeal way, perhaps in a more international context, which will ultimately be much more expensive for the State overall. Costs should be offset somewhat from significant contributions from the religious orders that ran the institutions.

### **Recommendations**

The Committee recommends that:

53. The need for reform of the Coronial system should not cause a delay to the holding of investigations into deaths at the institutions or human rights compliant inquests. Given the pressing need to hold these investigations and inquests post-haste, requisite resources should be made available to the Agency and to Coroners as soon as possible.
54. Financial and other resources should be leveraged so that meaningful work at sites can be undertaken as soon as possible. The recent pandemic has illustrated the ability of Governments to provide resources and financial supports quickly when required.
55. Head 33(2) provides a five-year period for the Agency to make arrangements to re-inter remains or release them to family members. The five-year outer limit should only apply in cases where no family members have been identified. Where identification has been made, arrangements to return the remains should be made as soon as possible.
56. There should be no attempt to avoid action at sites for financial reasons. Cost or economic impact should not be a basis not to intervene.
57. The religious orders involved in running the institutions should contribute significantly to the costs of investigating and compensating for all issues contained in the Mother and Baby Homes Commission of Investigation Report, including actions taken under this Bill.
58. The Government should implement the recommendations from the Report of the Collaborative Forum for Former Residents of Mother and Baby Homes and Related Institutions with immediate effect. The Government needs to consult with all institutional survivors and groups and to be aware that some groups are exclusive of others.





60. Head 8(3) should be amended to make express reference to the existing National Monuments Acts 1930-2004 as it references archaeology. Section 26(1) of that legislation outlines that any exposure or examination of a structure or thing of archaeological interest is unlawful without a licence to do so. The proposed Agency may reasonably encounter structures and deposits of this kind. Where this occurs, forensic investigators should use the lawful means of recording such archaeological material.

## KEY ISSUE 9: Provisions for greater transparency, accountability and right to appeal

Decisions around the setting up of an Agency and the work of that Agency need to be completely transparent if the public, family and survivors are to be expected to trust this legislation. There is not sufficient transparency, accountability and public reporting around decision-making built into the Bill at present. It is not enough that information will be given in annual reports and that the Agency will also be answerable to the relevant Oireachtas committees. The seriousness of the situation around these institutions and deaths, the delays and the failure to act in line with human rights obligations to date, mean that family, survivors and the public require robust accountability.

### Recommendations

The Committee recommends that:

61. There need to be provisions throughout the Bill for greater transparency, accountability and a right to appeal decisions.
62. It is essential that that the victims or next of kin are entitled to (i) make representations to the Agency Coroner before any decision is taken, (ii) to request that the hearing of any such representations are in public, and (iii) to challenge any decision by an Agency Coroner by way of judicial review in the event that there was an error of law.
63. Transparency and accountability need to be embedded in real-time reporting around actions or decisions taken under this legislation. It is not sufficient, as the Minister stated, that the key area of accountability will be the Government of the day having to explain to the Oireachtas why the particular circumstances of a site did not warrant investigation. This form of accountability is undefined, opaque, inclined to create further delays and not set out in clear policies and procedures.

## KEY ISSUE 10: Facilitating conflicting views among groups, survivors and family

The varied positions among survivor groups does not constitute valid grounds for inaction.

### **Recommendations**

The Committee recommends that:

64. Inquests and investigations can occur without the exhumation of bodies. This work should start as soon as possible.
65. The family and survivors of a particular institution or at a particular site should be meaningfully engaged with by the Agency, to establish the majority position in relation to exhumation.

## RECOMMENDATIONS

1. The focus of the Bill should be on victims and survivors and their rights. The Bill should not limit the extent to which the various sites can be investigated.
2. While the Committee notes that there are serious concerns regarding the procedure followed by the Mother and Baby Homes Commission of Investigation and the subsequent report, there were alarming instances of high mortality rates and inadequate records of burials and deaths discovered. For example, the Commission found that in Tuam no register of births was kept. The only known burial records relate to burials in external cemeteries and only in instances of hospital deaths. The Commission found that it is 'likely that most of the children who died in Tuam are buried inappropriately in the grounds of the institution'; Human remains were found in a 'structure with 20 chambers...built within the decommissioned large sewage tank'; it was not established that all children who died are buried here; there is some evidence of possible burials in other parts of what were the grounds. The Commission considered it likely that a large number of burials took place on the former Tuam institution site, particularly beneath a current memorial garden. It is essential that the General Scheme of this Bill focuses on fully investigating these discrepancies, including but not limited to the means of the proposed Agency, the Attorney General and an Garda Síochána. Survivor advocacy groups and stakeholders expressed in submissions to the Committee that proper investigation and accountability is what is necessary, and that this must go beyond the rhetoric of 'healing' and apologies.
3. The Bill and the General Scheme of this Bill should be revised to ensure human rights is paramount in every provision therein. Institutional burials and communal grave sites give rise to violations of the most fundamental human rights within the recognised hierarchy of human rights including the right to equality, the right to life, and freedom from torture and degrading treatment. These rights stem both from international human rights standards and the Irish Constitution. The Committee recommends that the matter of constitutionality and the avoidance of constitutional challenges raised by the Minister during his appearance before the Committee be considered in this regard.
4. The 70-year time limit should be removed. The Commission of Investigation into Mother and Baby Homes examined the period of 1922 to 1998, so the rationale for this statute of limitations is unclear. Pre-1950 burial sites should not be excluded (Head 6,6, B).
5. The scope of the General Scheme be revised to include any burial site where the circumstances surrounding the death and/or body-disposal method warrant an investigation as to their lawfulness.
6. That intervention should give due consideration to suspicious or unlawful deaths as well as the existence of inappropriate burials.
7. Heads 3, 5 and 6 should be revised to ensure the proposed legislation has due regard for protection of human rights of both victims and family members. This Bill must be founded in international human rights standards and embody the principles of transitional justice, namely: justice, reparation, truth-telling, and guarantees of non-recurrence. For example, the European Court of Human Rights has accepted the right to respect for private and family

life as providing a number of rights for family members of deceased persons. These include the right to information about the death and/or burial of a family member.<sup>9</sup> Under the ECHR Act 2003, this applies directly to matters of Irish law.

8. Restrictions placed on intervention in communal grave sites relating to property rights and access should be minimised within the Bill. The Committee notes it is striking that the only mention of rights in this General Scheme is the reference to property rights of landowners of burial sites. There is no mention of the rights of the deceased or their family members, which should be at the centre of this Bill. These obligations on the State arise from human rights standards and fundamental rights under the Constitution.
9. Efforts to address the priority of one set of rights above another must be made to avoid conflict with constitutional rights of persons affected. While the Minister informed the Committee that property rights are positioned so centrally in this Bill so as to have a balancing mechanism built-in to avoid constitutional challenges, the Committee are of the view that there can be a stronger balancing of the rights of family and survivors against those of landowners/proprietors in the legislation. Efforts should be made to prioritise the rights of family and survivors in this legislation.
10. Head 28 should be amended to remove sub-head (4). Given the time elapsed, it is entirely possible that housing developments have been constructed over all or part of a relevant site. However, sub-head (5) addresses this issue by permitting the Agency to make an application to the District Court to access lands in residential use, outlining that 'a judge of the District Court may, by order, grant an Agency access and all necessary rights to and over such lands for so long as is necessary for that Agency to carry out the functions assigned to it'. The Committee notes this is an effective remedy to the delicate issue as it leaves the decision as to what is 'necessary' with a judge in accordance with the ordinary legal procedure and the rule of law in this jurisdiction. Again, the rights of the victim or survivor need to be balanced with that of the owner and/or occupant, having regard to the relevant obligations under Article 2, 3, and 8, of the ECHR. It is ordinarily within the jurisdiction of the Court to interpret this balance as necessary.
11. A full review of the qualifying criteria for intervention must be conducted. A high volume of conditions and restrictions may prohibit Government to act to facilitate exhumations, examinations, identification and investigation.
12. The restrictions and tests set out in the proposed Bill could have the effect of precluding the establishment or action of an Agency in key sites such as Bessborough and Sean Ross Abbey, contrary to the views of the vast majority of stakeholders who engaged with the Committee. The Government should consider what is known about the Mother and Baby Home sites from the Final Report of the Mother and Baby Homes Commission of Investigation, among other sources.
13. A provision should be included under Head 9 to ensure the scope of the Agency to intervene extends to burial sites at all Irish institutions, including but not limited to: public and privately owned, Catholic and Protestant/Church of Ireland institutions and all other sites which are known to be associated with an institution.

---

<sup>9</sup> Hadri Vionet v. Switzerland Number 55525/00, 14 February 2008.

14. A) Following the completion of the exhumations at Tuam, a full review should be undertaken regarding the tests and criteria for intervention, including the mechanism whereby a decision to intervene at any site is made, and such report should be acted upon with a view to amending the legislation if necessary. This review should be laid before both houses of the Oireachtas and the relevant Oireachtas committee.  
B) While the Minister is powered with the decision to intervene, this should be done in consultation with the relevant authorities and the independent Agency. An appeals mechanism should also be in place. The relevant Minister and the Agency would be obliged to come before the relevant Oireachtas committee to defend and explain a decision to intervene or not intervene.
15. Head 6(10) should be amended to oblige the Government to intervene when the criteria and tests for intervention have been met. Memorialisation should complement this process. Compulsory purchase should be included for when all other avenues have been exhausted.
16. Head 6(3) should be removed. It states that sites are to be excluded from the Government order where *"there is an ongoing Garda investigation into the circumstances surrounding the burials or the way the deaths took place"*.
17. Inadequacy of records or suspicions around falsified records should warrant further enquiry regarding the possibility that a site may require investigation. The decision to excavate will be taken in accordance with the statutory tests.
18. Head 25 (1) should be amended to remove the word may. The use of the word 'may' suggests that a relevant body, including a religious order, can refuse to disclose information or records, without there being any apparent framework within which such a decision can be taken. The justification for this is unclear. To enable any investigation to be credible, the Agency must have full and complete powers to request and receive documentation relevant to the site. The phrase 'has a duty to' should replace 'may'.
19. Head 25 should be further amended to include the power to compel a body to disclose requested information. It is not appropriate that the Agency is powerless in the face of a refusal to cooperate and it undermines the very function of that Agency's mandate. The Committee notes that the Commission has obtained a complete copy of all HSE's records and that the proposed Agency must be empowered to obtain the same.
20. Given that the Adoption Heads of Bill do not provide a right to all records of a relative who died in an institution, this Bill must provide such a right.
21. The Minister needs to address the overwhelming need to know how the deceased died and their cause of death. The appointment of an Agency Coroner should be considered, with the necessary additional powers and duties to comply with Ireland's European human rights law obligations. These additional coronial powers to trigger independent investigation duties include dedicated infrastructure, full disclosure obligations, a mandatory requirement for publication of findings and full involvement of families.
22. The Department of Children, Disability, Equality, Integration and Youth and the Department of Justice should cooperate on all matters contained in this Bill and on all matters where cooperation is required to action the recommendations contained here.

23. The institutions in the Mother and Baby Homes Commission of Investigation Report, for the purposes of this Bill, should be deemed as having suspicious circumstances surrounding deaths and suspected criminal activity.
24. There was a strong view that there is enough evidence from the Mother and Baby Homes Commission of Investigation Report to trigger coronial investigations into how individuals in institutions died. This bill should not, in any form, delay that important work. The Committee notes that there was no Coroner's inquiry instigated in accordance with normally accepted practice following the discovery of the communal grave in Tuam, having regard to the fact that there were at minimum potential offences committed under (i) section 11 of the Maternity Act 1934 and (ii) the Local Sanitary Services Act 1948. Furthermore, no individuals have been questioned regarding the absence of a medical certificate for the death of any child, despite obligations to do so under section 18 of the Coroner's act 1962.
25. The Bill should be amended to include a provision that emphasises the existing legal obligation for any person who has information or suspicion of potential criminal activity to report this information to the relevant authorities and underlines that those authorities are legally obliged act on the information received.
26. The General Scheme must be amended to include a definition for what is to be considered manifestly inappropriate under the Bill.
27. Currently Head 33(1) reads "Where the Agency has exhumed remains or caused remains to be exhumed under Head 29, it shall, in consultation with the Sponsoring Minister, make such final arrangements for the remains as it deems most appropriate...". It is not for the Agency alone to determine what is appropriate. Survivors and family must be involved. Their involvement in the decision-making process around remains found at a site should be paramount in Head 33, not mentioned briefly in 33(3)(B).
28. Head 33 should be revised to place a statutory duty on the State to return, on request and without delay, the identified human remains and personal artefacts to families once intervention and identification has been completed. This must be done in a manner that facilitates informed consent of the process of identifying remains, which is outlined in key issue 6 below and which is detailed in Geoffrey Knupfer's submission to the Committee.
29. Head 33 should be amended to include a duty on the State to bury the remains in a specified location only and in a manner that respects the religious or cultural belief of the deceased, and where relevant that this occurs in close consultation with family members.
30. There should be a requirement for a wider consultation with affected groups and extended family members about the most appropriate way of dealing with remains which are to be re-interred.
31. The wishes and rights of survivors and family members should be given due regard and weighted over other factors insofar as is feasibly possible.
32. There should be provisions in the legislation for survivors and family members to be kept informed, on an ongoing basis, about the process as it relates to their family member's remains. The commitment to keep the family of the deceased informed should be stipulated in Head 33.



33. This head/provisions should be worded so that it is clearly without prejudice to survivors' and relatives' rights in respect of GDPR, FOI, Birth Information and Tracing.
34. Head 67 should be amended so that it is not the Agency that appoints the adjudicator, but it is the Coroner or some other entity yet to be identified, such as the Consultative Committee which will include families, who does so.
35. The Agency Coroner should have a statutory observer role with powers to invoke the coronial jurisdiction onsite when relevant.
36. The Coroner needs to be involved in any human remains analysis. Having no independent oversight of the death investigation process through the office of the Coroner is dangerous and leaves an important aspect of investigating the deaths out.
37. Best international practice should be adhered to in respect of all attempts for identification of human remains.
38. The Department should be cognisant of the submissions the Committee received from DNA experts.
39. All timelines, in Head 65 and elsewhere, relating to the time that can elapse before the destruction of DNA samples from both the bodies and potential family members should be drastically lengthened.
40. A multidisciplinary approach must be engaged. All relevant professional disciplines should be engaged to ensure the best possible outcome in terms of identification of the human remains, the arbiter of relevance should be the Coroner/ Coronial expert engaged by the Agency, with an appeal possible to the adjudicator.
41. The Bill should explicitly commit to using the best techniques possible.
42. The Department should engage with third-level institutions with relevant expertise in this area to incorporate their knowledge and capabilities into the workings of the identification programme, the workings of Forensic Science Ireland on this and into any Coronial/criminal investigations undertaken in relation to deaths at Mother and Baby Homes.
43. Delays in beginning the collection of DNA have been attributed to COVID-19. However, due to the success of the vaccination roll-out this work should begin immediately and be intensely resourced.
44. A multidisciplinary approach must be engaged. All relevant professional disciplines should be engaged to ensure the best possible outcome. The arbiter of relevance should be the Coroner or Coronial expert engaged by the Agency, with an appeal possible to the adjudicator.

45. Information about the techniques and professions involved in, and steps taken to identify remains and investigate what happened individuals at a site should be publicly published at regular intervals during:
  - A. the decision-making process around deciding to intervene at a site; and
  - B. during the intervention and the work of the Agency.(Without prejudice to any criminal investigation)
46. The decision not to engage certain disciplines or use certain techniques must be published with explanation, this includes the decision of the adjudicator.
47. Best international practice should be adhered to where a decision in respect of a pilot programme is in dispute. Appeals may be made to the independent adjudicator.
48. Head 51 should be amended to provide further clarity on what a 'reasonable prospect' is and the threshold for this should not be overly high or it will prevent identification programmes at sites where they may be warranted.
49. Head 53 (2) should be amended such that, aside from half-siblings, other second order relatives, including grandchildren, uncles, aunts, nephews and nieces may participate in the Identification Programme.
50. Head 62 should be amended to clarify the purpose, structure, and scope of the review into the operation of Part 6. This should include an explicit requirement to review the operation after a set period of time. Any such review should include the meaningful participation of families, groups representing survivors and families, persons with human rights and data protection expertise, and other relevant persons or groups.
51. Head 53 should be amended so that there is no hierarchy of access to participation in the identification programme. All first and second order relatives should have equal access to participate.
52. Head 25 should be amended to legally oblige any public body to disclose information, records or documents in its possession to the Agency relating to the Agency's functions. "Any public body *may*..." should be replaced with "any public body *must*..." here. (Head 25, 1). Furthermore, there should be a legal obligation to disclose similar information about deaths in Mother and Baby Homes to the authorities generally.
53. The need for reform of the Coronial system should not cause a delay to the holding of investigations into deaths at the institutions or human rights compliant inquests. Given the pressing need to hold these investigations and inquests post-haste, requisite resources should be made available to the Agency and to Coroners as soon as possible.
54. Financial and other resources should be leveraged so that meaningful work at sites can be undertaken as soon as possible. The recent pandemic has illustrated the ability of Governments to provide resources and financial supports quickly when required.
55. Head 33(2) provides a five-year period for the Agency to make arrangements to re-inter remains or release them to family members. The five-year outer limit should only apply in cases where no family members have been identified. Where identification has been made, arrangements to return the remains should be made as soon as possible.

56. There should be no attempt to avoid action at sites for financial reasons. Cost or economic impact should not be a basis not to intervene.
57. The religious orders involved in running the institutions should contribute significantly to the costs of investigating and compensating for all issues contained in the Mother and Baby Homes Commission of Investigation Report, including actions taken under this Bill.
58. The Government should implement the recommendations from the Report of the Collaborative Forum for Former Residents of Mother and Baby Homes and Related Institutions with immediate effect. The Government needs to consult with all institutional survivors and groups and to be aware that some groups are exclusive of others.
59. In drafting the final version of the Bill and in taking the next steps, the Department should be mindful of best practice and Ireland's obligations under:
- Bournemouth Protocol<sup>10</sup>
  - European Convention on Human rights
  - European Court of Human Rights (ECtHR) rulings and precedents generally
  - Relevant UN Conventions, precedents and rulings
  - Common law, domestic law and the Coroners Acts
  - The Minnesota Protocol<sup>11</sup>
  - Articles 2, 3 & 8 ECHR<sup>12</sup>
  - The principles of transitional justice
  - INTERPOL protocol for Disaster Victim Identification (DVI)<sup>13</sup>
60. Head 8(3) should be amended to make express reference to the existing National Monuments Acts 1930-2004 as it references archaeology. Section 26(1) of that legislation outlines that any exposure or examination of a structure or thing of archaeological interest is unlawful without a licence to do so. The proposed Agency may reasonably encounter structures and deposits of this kind. Where this occurs, forensic investigators should use the lawful means of recording such archaeological material.
61. There need to be provisions throughout the Bill for greater transparency, accountability and a right to appeal decisions.
62. It is essential that that the victims or next of kin are entitled to (i) make representations to the Agency Coroner before any decision is taken, (ii) to request that the hearing of any such representations are in public, and (iii) to challenge any decision by an Agency Coroner by way of judicial review in the event that there was an error of law.

---

<sup>10</sup>[https://issuu.com/bournemouthuniversity/docs/the\\_bournemouth\\_protocol\\_on\\_mass\\_grave\\_protection\\_?r=sMjc3OTI0MjAyNzM](https://issuu.com/bournemouthuniversity/docs/the_bournemouth_protocol_on_mass_grave_protection_?r=sMjc3OTI0MjAyNzM)

<sup>11</sup> The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), 2017, p. 4.

<sup>12</sup> [HUMAN RIGHTS ISSUES AT THE FORMER SITE OF THE MOTHER AND BABY HOME, TUAM, CO. GALWAY \(assets.gov.ie\)](#)

<sup>13</sup> <https://www.interpol.int/en/How-we-work/Forensics/Disaster-Victim-Identification-DVI>

63. Transparency and accountability need to be embedded in real-time reporting around actions or decisions taken under this legislation. It is not sufficient, as the Minister stated, that the key area of accountability will be the Government of the day having to explain to the Oireachtas why the particular circumstances of a site did not warrant investigation. This form of accountability is undefined, opaque, inclined to create further delays and not set out in clear policies and procedures.
64. Inquests and investigations can occur without the exhumation of bodies. This work should start as soon as possible.
65. The family and survivors of a particular institution or at a particular site should be meaningfully engaged with by the Agency, to establish the majority position in relation to exhumation.

## APPENDIX 1 - ORDERS OF REFERENCE

### a. Functions of the Committee – derived from Standing Orders [DSO 95; SSO 71]

1) The Dáil may appoint a Departmental Select Committee to consider and, unless otherwise provided for in these Standing Orders or by order, to report to the Dáil on any matter relating to—

- (a) legislation, policy, governance, expenditure and administration of—
  - (i) a Government Department, and
  - (ii) State bodies within the responsibility of such Department, and
- (b) the performance of a non-State body in relation to an agreement for the provision of services that it has entered into with any such Government Department or State body.

(2) A Select Committee appointed pursuant to this Standing Order shall also consider such other matters which—

- (a) stand referred to the Committee by virtue of these Standing Orders or statute law, or
- (b) shall be referred to the Committee by order of the Dáil.

(3) The principal purpose of Committee consideration of matters of policy, governance, expenditure and administration under paragraph (1) shall be—

- (a) for the accountability of the relevant Minister or Minister of State, and
- (b) to assess the performance of the relevant Government Department or of a State body within the responsibility of the relevant Department, in delivering public services while achieving intended outcomes, including value for money.

(4) A Select Committee appointed pursuant to this Standing Order shall not consider any matter relating to accounts audited by, or reports of, the Comptroller and Auditor General unless the Committee of Public Accounts—

- (a) consents to such consideration, or
- (b) has reported on such accounts or reports.

(5) A Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann to be and act as a Joint Committee for the purposes of paragraph (1) and such other purposes as may be specified in these Standing Orders or by order of the Dáil: provided that the Joint Committee shall not consider—

- (a) the Committee Stage of a Bill,
- (b) Estimates for Public Services, or
- (c) a proposal contained in a motion for the approval of an international agreement involving a charge upon public funds referred to the Committee by order of the Dáil.

(6) Any report that the Joint Committee proposes to make shall, on adoption by the Joint Committee, be made to both Houses of the Oireachtas.

(7) The Chairman of the Select Committee appointed pursuant to this Standing Order shall also be Chairman of the Joint Committee.

(8) Where a Select Committee proposes to consider—

- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 133, including the compliance of such acts with the principle of subsidiarity,
- (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
- (c) non-legislative documents published by any EU institution in relation to EU policy matters, or
- (d) matters listed for consideration on the agenda for meetings of the relevant Council (of Ministers) of the European Union and the outcome of such meetings,

the following may be notified accordingly and shall have the right to attend and take part in such consideration without having a right to move motions or amendments or the right to vote:

- (i) members of the European Parliament elected from constituencies in Ireland,
- (ii) members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
- (iii) at the invitation of the Committee, other members of the European Parliament.

(9) A Select Committee appointed pursuant to this Standing Order may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department consider—

- (a) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and
- (b) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select: Provided that the provisions of Standing Order 130 apply where the Select Committee has not considered the Ombudsman report, or a portion or portions thereof, within two months (excluding Christmas, Easter or summer recess periods) of the report being laid before either or both Houses of the Oireachtas.

**b. Scope and Context of Activities of Committees (as derived from Standing Orders) [DSO 94; SSO 70]**

(1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders;

(2) such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil/Seanad;

(3) it shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under DSO 125(1) and SSO 108(1); and

(4) it shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—

- (a) a member of the Government or a Minister of State, or
- (b) the principal office-holder of a State body within the responsibility of a Government Department or
- (c) the principal office-holder of a non-State body which is partly funded by the State,

Provided that the Committee may appeal any such request made to the Ceann Comhairle, whose decision shall be final.

(5) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice to the Business Committee by a Chairman of one of the Select Committees concerned, waives this instruction.

#### **c. Powers of Committees (as derived from Standing Orders) [DSO 96; SSO 72]**

Unless the Dáil/Seanad shall otherwise order, a Committee appointed pursuant to these Standing Orders shall have the following powers:

(1) power to invite and receive oral and written evidence and to print and publish from time to time—

- (a) minutes of such evidence as was heard in public, and
- (b) such evidence in writing as the Committee thinks fit;

(2) power to appoint sub-Committees and to refer to such sub-Committees any matter comprehended by its orders of reference and to delegate any of its powers to such sub-Committees, including power to report directly to the Dáil/Seanad;

(3) power to draft recommendations for legislative change and for new legislation;

(4) in relation to any statutory instrument, including those laid or laid in draft before either or both Houses of the Oireachtas, power to—

- (a) require any Government Department or other instrument-making authority concerned to—
  - (i) submit a memorandum to the Joint Committee explaining the statutory instrument, or
  - (ii) attend a meeting of the Joint Committee to explain any such statutory instrument: Provided that the authority concerned may decline to attend for

reasons given in writing to the Joint Committee, which may report thereon to the Dáil, and

(b) recommend, where it considers that such action is warranted, that the instrument should be annulled or amended;

(5) power to require that a member of the Government or Minister of State shall attend before the Joint Committee to discuss—

(a) policy, or

(b) proposed primary or secondary legislation (prior to such legislation being published),

for which he or she is officially responsible: Provided that a member of the Government or Minister of State may decline to attend for stated reasons given in writing to the Joint Committee, which may report thereon to the Dáil: and provided further that a member of the Government or Minister of State may request to attend a meeting of the Joint Committee to enable him or her to discuss such policy or proposed legislation;

(6) power to require that a member of the Government or Minister of State shall attend before the Joint Committee and provide, in private session if so requested by the attendee, oral briefings in advance of meetings of the relevant EC Council (of Ministers) of the European Union to enable the Joint Committee to make known its views: Provided that the Committee may also require such attendance following such meetings;

(7) power to require that the Chairperson designate of a body or agency under the aegis of a Department shall, prior to his or her appointment, attend before the Select Committee to discuss his or her strategic priorities for the role;

(8) power to require that a member of the Government or Minister of State who is officially responsible for the implementation of an Act shall attend before a Joint Committee in relation to the consideration of a report under DSO 197/SSO 168;

(9) subject to any constraints otherwise prescribed by law, power to require that principal office-holders of a—

(a) State body within the responsibility of a Government Department or

(b) non-State body which is partly funded by the State,

shall attend meetings of the Joint Committee, as appropriate, to discuss issues for which they are officially responsible: Provided that such an office-holder may decline to attend for stated reasons given in writing to the Joint Committee, which may report thereon to the Dáil/Seanad; and

(10) power to—

(a) engage the services of persons with specialist or technical knowledge, to assist it or any of its sub-Committees in considering particular matters; and

(b) undertake travel;

Provided that the powers under this paragraph are subject to such recommendations as may be made by the Working Group of Committee Chairmen under DSO 120(4)(a)/SSO 107(4)(a).



## APPENDIX 2 - COMMITTEE MEMBERSHIP

Deputies: Patrick Costello (GP)  
Cathal Crowe (FF)  
Alan Dillon (FG)  
Jennifer Murnane O'Connor (FF)  
Kathleen Funchion (SF) [Cathaoirleach]  
John Paul Phelan (FG)  
Sean Sherlock (LAB)  
Mark Ward (SF)  
Holly Cairns (SD)

Senators: Ned O'Sullivan (FF)  
Sharon Keogan (IND)  
Erin McGreehan (FF)  
Lynn Ruane (IND)  
Mary Seery Kearney (FG)

### Notes:

1. Deputies nominated by the Dáil Committee of Selection and appointed by Order of the Dáil of 8 September 2020.
2. Senators nominated by the Seanad Committee of Selection and appointed by Order of the Seanad on 25 September 2020.
3. Deputy Kathleen Funchion appointed as Chair by the Report of the Committee of selection and appointment of chairs by Dáil resolution on 8 September 2020.
4. Deputy Patrick Costello was appointed as Vice-Chair on 3 November 2020.
5. Deputy Joe Flaherty discharged, and Deputy Jennifer Murnane O'Connor appointed to serve in his stead by the seventh Report of the Dáil Committee of Selection as agreed by Dáil Éireann on 3 February 2021.
6. Deputy Jennifer Whitmore discharged, and Deputy Holly Cairns appointed to serve in her stead by the eighth Report of the Dáil Committee of Selection as agreed by Dáil Éireann on 5 May 2021.
7. Senator Mary Fitzpatrick discharged, and Senator Ned O'Sullivan appointed to serve in her stead by the seventh Report of the Seanad Committee of Selection as agreed by Seanad Éireann on 17 May 2021.

## APPENDIX 3 – LINKS TO MEETING TRANSCRIPTS

[Meeting of 16 February 2021](#)

[Meeting of 14 April 2021](#)

[Meeting of 27 April 2021](#)

[Meeting of 18 May 2021](#)

## APPENDIX 4 – LINKS TO SUBMISSIONS & OPENING STATEMENTS

### Opening Statements

#### **16 February 2021**

##### **Department of Children, Equality, Disability, Integration & Youth**

- [Roderic O’Gorman T.D., Minister for Children, Equality, Disability, Integration & Youth](#)

#### **14 April 2021**

- [Catherine Corless](#)
- [Susan Lohan](#)
- [Anna Corrigan](#)
- [Professor Phil Scraton and Dr Maeve O’Rourke](#)
- [Professor Ray Murphy](#)
- [Doireann Ansbro](#)
- [Kevin Higgins](#)
- [Martin Parfrey](#)
- [David Dodd BL](#)
- [Anna Corrigan](#)
- [Stephen Donoghue PhD, MSc, LLB](#)
- [Dr Niamh McCullough BL](#)

#### **27 April 2021**

##### **Representatives from the Collaborative Forum**

- [Alice Coughlan](#)
- [Sidney Herdman](#)

##### **Aitheantas**

- [Maree Ryan-O’Brien](#)

#### **Tuesday 18 May 2021**

##### **Department of Children, Equality, Disability, Integration & Youth**

- [Roderic O’Gorman T.D., Minister for Children, Equality, Disability, Integration & Youth](#)

## Submissions

The submissions received are published on the Committee webpage. These have been uploaded there in three groups and are available at the following links:

[Group 1](#)

[Group 2](#)

[Group 3](#)

## APPENDIX 5 – Bibliography / recommended reading

- Bournemouth Protocol  
Bournemouth University, Bournemouth Protocol on mass grave protection and investigation, 2020.  
[https://issuu.com/bournemouthuniversity/docs/the\\_bournemouth\\_protocol\\_on\\_mass\\_grave\\_protection\\_fr=sMjc3OTI0MjAyNzM](https://issuu.com/bournemouthuniversity/docs/the_bournemouth_protocol_on_mass_grave_protection_fr=sMjc3OTI0MjAyNzM)
- Minnesota Protocol  
Available at: [MinnesotaProtocol.pdf \(ohchr.org\)](#)
- *Final Report of the Commission of Investigation into Mother and Baby Homes*  
Department of Children, Equality, Disability, Integration and Youth, 2020. Available at: [gov.ie - Final Report of the Commission of Investigation into Mother and Baby Homes \(www.gov.ie\)](#)
- Dr Geoffrey Shannon on Tuam  
*Human Rights Issues at the Former Site Of The Mother And Baby Home, Tuam, Co. Galway*  
Available at: [HUMAN RIGHTS ISSUES AT THE FORMER SITE OF THE MOTHER AND BABY HOME, TUAM, CO. GALWAY \(assets.gov.ie\)](#)
- CLANN Project submissions to the Commission of Investigation into Mother and Baby Homes  
Available at:  
[Clann-Submissions\\_Redacted-Public-Version-October-2018.pdf \(clannproject.org\)](#)
- United Nations on definition of mass graves  
United Nations General Assembly. Report of the Special Rapporteur of the Human Rights Council on extrajudicial, summary or arbitrary executions: Mass graves, highlighting the multitude of sites of mass killings and unlawful deaths across history and the world, 2020 UN Doc A/75/384, para 17(d).
- International Commission on Missing Persons  
As a general resource. See: [ICMP International Commission on Missing Persons](#)
- Guide on Article 2 of the European Convention on Human Rights  
European Court of Human Rights. Available at:  
[https://www.echr.coe.int/Documents/Guide\\_Art\\_2\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_2_ENG.pdf)

- The Expert Technical Group Report on the site of the former Tuam Mother and Baby Home  
Available at: [gov.ie](http://www.gov.ie) - [Minister Zappone publishes Expert Technical Group Report on the site of the former Tuam Mother and Baby Home | Public consultation will inform decisions on the future of the site \(www.gov.ie\)](#)
- INTERPOL protocol for Disaster Victim Identification (DVI)  
Available at: <https://www.interpol.int/en/How-we-work/Forensics/Disaster-Victim-Identification-DVI>
- Ireland's ratification status of UN Conventions  
Available at: [Treaty bodies Treaties \(ohchr.org\)](http://www.ohchr.org)



## Houses of the Oireachtas

Leinster House  
Kildare Street  
Dublin 2  
D02 XR20

[www.oireachtas.ie](http://www.oireachtas.ie)

Tel: +353 (0)1 6183000 or 076 1001700

Twitter: @OireachtasNews

## Connect with us



## Download our App

