

Government approves programme of action to respect the memory and dignity of children who died in Tuam Mother and Baby Home

24 October 2018

Frequently Asked Questions:

1. What has the Government decided?

In responding to the discovery of juvenile remains interred at the site of the former institution, the Government has approved the forensic excavation of the available site within the multi-disciplinary framework known as Humanitarian Forensic Action.

The Minister for Children and Youth affairs has confirmed that all reasonable steps will be taken to ensure that the children interred at the site have a dignified and respectful burial and to assist their families, and the wider community, in seeking answers to as many questions as possible.

The Government appreciates this decision is hugely important for all connected to the site at Tuam. This course of action complies with international best practice and upholds national and international human rights.

2. What is Humanitarian Forensic Action?

In the context of international best practise considerations, the report of the Expert Technical Group advises that forensic science has been increasingly used in complex cases such during the last 30 years. More recently, this type of work is termed Humanitarian Forensic Action, aiming to capture the use of forensic science in mass death contexts that are not necessarily criminal contexts. This approach provides a structure that protects the dignity of the dead through proper recovery, management, and where possible, identification.

3. What actions are envisaged?

The actions to be taken include a phased approach to the forensic excavation and recovery of the juvenile human remains in so far as this is practicable; the use of systematic on-site ground-truthing and test excavations to effectively locate potential burials; the forensic analysis of any recovered remains and, where possible, individualisation and identification; arrangements for respectful reburial and memorialisation, and the appropriate conservation of the site.

4. What does a phased approach mean?

A phased approach means an informed and targeted approach to the forensic excavation and recovery of the comingled juvenile interred at this site. Every reasonable effort will be made to locate and recover all juvenile remains from the site.

In making its decision, the Government placed significant emphasis on the expert view that any action “*should be in line with best practice, employing an informed, phased approach, to the resolution of the site*” (Section 6: Tuam Expert Technical Report).

In this way the logical sequence of complex technical and forensic decisions will be informed by real time information emerging from the site as the work progresses. In addition, this approach also facilitates the systematic piloting of an Identification Programme (including the use of DNA technology).

The potential scale of the excavations cannot be determined in advance. Excavations will initially focus on the remains known to be within the series of chambers identified by the Commission of Investigation last March, with further testing to allow for the informed and phased extension of the field of the investigation across the available site as necessary. Forensic excavation of the full site will be undertaken if this is deemed necessary to find answers. The Expert Technical Group has already identified eight separate anomalies and these findings will be supplemented by further investigations to determine the extent of potential human remains across the site.

We will not include areas where houses and gardens have been built and developed. In this way, it is hoped that the level of disruption around the site can be effectively managed and minimised.

5. What are the advantages to this approach?

The advantages to this approach are:

- It builds upon initial work done by the Commission of Investigation and the Expert Technical Group;
- It involves excavation of anomalies and recovery of identified remains while also attempting to minimise disruption to local residents;
- It is a phased, systematic approach with decisions informed by real-time technical and scientific information;
- It allows for excavation of the total available area if this is warranted;
- On-going communication with families and local residents through a community liaison officer will be established;
- It avoids unnecessary disturbance to archaeological features or 19th century burials;
- It is in compliance with the Human Rights of the families as outlined in Dr. Shannon’s Report.

6. What does Dr. Geoffrey Shannon’s report say?

The report points to the importance of the human rights dimension in any decision on the Tuam site and the remains interred therein. While noting that there may be a dignity interest in not disturbing the burial site, the report deals extensively with the case that the State has a positive duty to make reasonable and proportionate efforts to recover and return the remains to families.

7. What reports have informed the proposed course?

Minister Zappone drew carefully on the voices of those who have engaged directly with her, the wider public consultation process, the defined technical options and related legal considerations, and the report prepared by Dr Geoffrey Shannon. The formal reports include:

- A. Expert Technical Group Report on Tuam: Options and Appropriate Courses of Action available to Government at the site of the former Mother and Baby Home, Tuam, Co. Galway (published December 2017).
- B. Consultation Report on Technical Options (published July 2018).
- C. Human Rights issues at the former site of the Mother and Baby Home, Tuam, Co. Galway: report by Dr Geoffrey Shannon (published today).

Summary details of these reports can be found at Appendices A, B and C respectively. The 3 reports are available in full to download from the website of the Department of Children and Youth Affairs

<https://www.dcy.gov.ie/docs/EN/Mother-and-Baby-Homes-Statements-Speeches-Press-Releases/4449.htm>

8. Will DNA technology be utilised?

Yes, DNA technology will be utilised in so far as possible to assist in the identification of any recovered remains. The potential for DNA to be recovered, and the potential for its utilisation as part of an ID programme, must first be assessed. The ETG has emphasised the need for realistic expectations as to what may be achieved in relation to the potential use of DNA identification and other molecular technologies in a complex site such as Tuam.

The ETG has stressed the following in its reports and briefings to the Minister:

- DNA molecular techniques carry no guarantee of resolving all the questions which arise. Forensic science has its limits and the site at Tuam tests the boundaries of forensic investigation in every regard;
- The impossibility of achieving positive DNA identification of infants and young juveniles without samples from living relatives. Even then, identification will be extremely difficult, and will depend on the quality of the remains recovered. The complexity of genetic distance of living relatives and the high burden of proof demanded in determining a positive identification;
- The need for a pilot/feasibility study before any decision is taken to move to a larger programme of DNA testing. Even then, due to variations in environmental and geographic factors, the pilot/samples would give an indication of results only for the selected sample, and caution is required in extrapolating to the wider site.

The Minister sought and received further clarification from the ETG on the potential use of DNA technology and the additional report of the ETG is attached as Appendix D.

Further details on the use of DNA can be found on the department's website at the link below:

https://www.dcy.gov.ie/documents/mother_and_baby_homes/20171212FAQsTuam.pdf

9. Why is new legislation required?

Specific lawful authority is required to support the approved comprehensive course of action at the Tuam site. Before significant works at this site can commence the State must ensure that there is a sound legal basis upon which to do so.

Exhumation is strictly controlled in law. The two relevant statutes are the Coroners Act 1962 and the Local Government (Sanitary Services) Act 1948. These instruments set out the specific powers and responsibilities of the Coroner, An Garda Síochána, the Minister for Justice and Equality, the Attorney General and the Local Authority, as applicable.

As outlined in the Expert Technical Group Report, the circumstances in Tuam are unprecedented in an Irish context. Therefore, in practical terms the present situation is not within the parameters of existing legislation.

Given the passage of time, the commingling of remains and the difficulties of identifying the remains that are there, the definitive legal advices available to the Minister are that the existing legislative pathways are inadequate to sustain exhumations in the circumstances of the Tuam site. For this reason bespoke legislative provision is required.

The Minister now has Government approval to proceed with this important work.

10. How will the legislation be developed?

Given the complexity involved, a small dedicated cross-departmental team, led by the Department of Children and Youth Affairs, is being established to develop the general scheme of a Bill as a matter of priority. The group will comprise of officials with appropriate experience and expertise from the Department of Justice and Equality, the local government sector and, for legal advisory purposes, the Attorney General's Office to prepare the general scheme of a Bill. Officers from other Departments may be needed for a time depending on the issues being addressed. The unique circumstances of this case stretch the normal operating boundaries of a number of departments and state agencies, but crucially all parties will support and assist this work to the greatest extent possible.

The Minister intends to revert to Government when the draft scheme for a Bill is available. Consideration will be given to the procurement and management of the excavation process and related forensic works in the course of drafting the legislation. The Minister also intends to revert to Government at the appropriate point with further details of the project and estimated costs.

11. What is the timeframe for commencement of works on the site?

The Government has agreed a blueprint on how to move forward. The issues involved are complex and it will take time to prepare and enact new legislation. We will have a better idea of how long it will take after the cross-departmental team has commenced its work. With this in mind it would be misleading to set out a firm timeline now. Speculation on a timeframe is premature at this stage.

The Minister is determined to turn the Cabinet decision of 23 October into actions on site as soon as possible.

12. What is the role of the local coroner and the Gardaí with regard to the discoveries at Tuam?

The Minister is advised that there are currently no active coronial or criminal investigations concerning the Tuam site. The functions of a Coroner and An Garda Síochána are set out in law and should further information emerge it would be a matter for relevant authorities to independently consider what response may be appropriate in accordance with their respective statutory functions.

The Coroner for North Galway was formally advised of the discovery of remains by the Commission of Investigation into Mother and Baby Homes. He visited the site at that time and offered his assistance within the scope of his statutory role. It must be noted that a Coroner has limited powers regarding exhumation. An exhumation under the Coroners Act is predicated on (i) a senior member of an Garda Síochána informing the Coroner of his opinion that a death of a person whose body has been buried in the Coroner's district may have occurred in a violent or unnatural manner (ii) the Coroner requesting the Minister for Justice and Equality to order the exhumation of the body by an Garda Síochána and (iii) the Minister making the order.

From the information available so far, there is no clear evidence of suspicious deaths and this would be crucial to the engagement of the coroner in further investigations. The coroner will remain in close contact with relevant agencies as matters progress.

13. What does this mean for those living in the vicinity of the site?

Access to the entire available site will be required in the course of the project. Works are unlikely to commence before 2019 and local residents will be consulted on relevant matters before any works commence. Dedicated community liaison arrangements will be in place for the duration of the project. Detailed project planning will seek to minimise the level of disruption for local residents.

The Department will make information available to interested parties to keep them informed of progress on this issue.

14. How much will the works cost?

A preliminary exercise envisaged a range of costs from €6m to €13m. Given that the project will be responsive to the demands of the site there is clearly potential for high variability in the ultimate costs. There are many unknown and unquantified variables at this early stage. Our estimates includes excavation and ground works on-site, and related technical and laboratory based forensic work, with further costs arising for respectful reburial and memorialisation.

Further clarity in relation to the contracting authorities and procurement considerations will emerge in the course of preparing the legislation and related considerations.

It is also important to note that the costs may be incurred by a number of Departments and/or agencies depending on the mechanics of the legislative pathway and the commissioning authorities to be identified. The Minister will bring a more detailed project proposal and estimate of costs to government for approval.

15. What has the Minister agreed with the Bon Secours Order?

The Minister commenced negotiations with Bon Secours Order on a contribution to the costs of taking the proposed measures. The Order has willingly and constructively engaged with the Minister, and an offer of €2.5m has been made. This is not a settlement offer relinquishing the Order from any future liability. It offers no indemnity. The Minister will revert to Government to seek approval of the agreement in the coming weeks.

16. Will the legislation be specific to Tuam or will it be applied to other sites?

This is one of the legislative issues to be determined in the course of developing enabling legislation.

17. Who will carry out the work?

A core multi-disciplinary team which will comprise of experts and construction personnel employed on the project and the project manager will be established. They may be supplemented by persons in the employ of the State with appropriate expertise and with additional external oversight from an appropriate international body. The team of between 20 and 30 experts will include:

Forensic Archaeologists, Osteologist/Forensic Anthropologists, Supervising Osteologist/ Forensic Anthropologist, Laboratory IT , Site Surveyor/photographer and Laboratory Administration

It is envisaged that there will be two separate work locations associated with the project: on site for the excavation works and recovery work, and off site for the more technical laboratory based analysis and administration.

18. Further information:

Should you have any questions in relation to this information please contact the Department of Children and Youth Affairs dedicated information line at 01-6473200 or email us at motherandbabyhomes@dcya.gov.ie