

## ADOPTION (INFORMATION AND TRACING) BILL 2016

### QUESTIONS & ANSWERS

**1. What is the purpose of the legislation?**

The Adoption (Information and Tracing) Bill will give adopted persons, birth parents and relatives a legal right to an information and tracing service. The proposed legislation provides for structured and regulated access to information and tracing services for those affected by adoption. It provides for access to information for adopted people, birth parents and others, and operates on the basis of a presumption in favour of disclosing information in so far as is legally and constitutionally possible. The proposed legislation will establish “The Register of Adoption Contact Enquiries” and provides for the safeguarding of all adoption records.

**2. How will people be informed about the new arrangements?**

Tusla – the Child and Family Agency will undertake an awareness campaign during the first six months after the legislation comes into operation to inform people about the provisions of the Adoption (Information and Tracing) Bill. The campaign will publicise the provisions of the new legislation, outlining what information can be provided and the circumstances in which it can be provided.

In particular, the campaign will outline that an adopted person, aged 18 years and over, will be entitled to apply for their birth certificate information and that a birth parent will be given an opportunity to indicate their preference regarding contact on the Register of Adoption Contact Enquiries. Anyone entering their details on the Register of Adoption Contact Enquiries can change their contact preference at any time.

The information campaign will encourage adopted people and birth parents to enter their details on the Register of Adoption Contact Enquiries and to engage with the Tusla’s Information and Tracing Services, if they are considering sharing information and/or having contact with a person whom they were separated from as a result of an adoption.

**3. Informal adoption and incorrect registrations**

People who were affected by “informal adoptions”, that is in a long term care arrangement where no adoption took place, or where births have been incorrectly registered, will be entitled to an information and tracing service in the same manner as an adopted person or a birth parent of an adopted person.

**4. Will there be support for adopted people and/or birth parents?**

The proposed legislation will provide that Tusla will offer support and guidance to adopted people, birth parents, and relatives at all stages of the information and tracing process.

## **THE REGISTER OF ADOPTION CONTACT ENQUIRIES**

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**5. What is the Register of Adoption Contact Enquiries?**

A new Register is to be established and operated by Tusla. The Register is the gateway into the information and tracing service and will facilitate information sharing and contact between adopted people, birth parents and relatives.

An adopted person, a birth parent or relative seeking to share information or wishing to have contact with a person with whom they were separated as a result of an adoption, may apply to have their details entered on the Register. People can also enter their details on the Register to indicate that they are “not willing to be contacted” by a specified person.

**6. If my details are already entered on the current National Adoption Contact Preference Register, do I need to reapply?**

The existing National Adoption Contact Preference Register (NACPR) will be discontinued. However, all information relating to the NACPR will be retained. Before the new Register is established, each person whose details are on the NACPR will be contacted advising them of the new Register that is being established by Tusla. They will be invited to apply to have their details entered on the new Register. However, where birth parents have already indicated a preference for no contact on the NACPR, details of this preference will be transferred to the new Register.

## **ADOPTION RECORDS**

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**7. How will adoption records be dealt with?**

Adoption records are currently held by the Adoption Authority of Ireland, Tusla and agencies accredited under the Adoption Act 2010. These records are of historical significance and are of great importance for adopted people, birth parents, and relatives. Under the proposed legislation, the Authority will have overall responsibility for the safeguarding of all adoption records, including information relating to informal adoptions and persons whose birth was incorrectly registered. All adoption records, which are currently held in a number of locations, are to be transferred to the custody of the Authority. The Bill provides that the records are to be indexed and a searchable electronic database of the records is to be created. The Authority is to ensure that all adoption records are to be kept in a suitable and secure location with access to be provided to a person to view his or her own records.

**8. What types of records are in existence?**

The majority of adoption records are currently held by the Authority or Tusla. The Authority holds an individual record of each domestic adoption that has taken place in Ireland since the Adoption Act 1952. Many of the older records provide information on an adoption by

way of a series of entries into ledger type registers or notebooks, which were maintained by the various institutions involved in the care of the mother and baby and the adoption process. The proposed legislation will ensure that all these records are collected, restored, preserved, stored and safeguarded.

**ADOPTIONS EFFECTED BEFORE THE PROPOSED LEGISLATION COMES INTO OPERATION**

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**9. Will a person whose was adopted before the proposed legislation comes into operation be provided with their Birth Certificate information?**

An adopted person aged 18 years or over who was adopted before the proposed legislation comes into operation, will be provided with his/her birth certificate information, as held on record, following a request to Tusla, subject to certain conditions.

**10. What are the conditions that must be complied with prior to release of birth certificate information?**

Where an adoption order was made before the proposed legislation comes into operation, birth certificate information will be provided to an adopted person, after he/she has given an undertaking agreeing not to contact or attempt to contact his/her birth parent or not to ask anyone else to make or attempt to make contact on his/her behalf.

**11. Is the adopted person required to give an undertaking in all cases?**

The adopted person must give an undertaking agreeing not to contact or attempt to contact his/her birth parent or not to ask anyone else to make or attempt to make contact on his/her behalf unless the birth parent is deceased or is seeking to have contact with or willing to be contacted by the adopted person.

**12. Will adopted persons be entitled to their birth certificate information immediately?**

There will be an initial period of six months after the proposed legislation comes into operation, during which an awareness campaign to publicise the provisions of the Bill will be undertaken. During this period, birth certificate information can be provided to an adopted person where the birth parent agrees to its release. After this, an adopted person will have a statutory entitlement to his/her birth certificate information.

**13. Will a birth mother be advised in advance that birth certificate information will be provided to an adopted person?**

Where a birth mother has registered her details on the Register, Tusla will notify her, in writing, of the adopted person's application for his/her birth certificate information. She will be offered support and guidance by Tusla and advised that the adopted person has also been also been offered support and guidance. The birth mother will be advised that the information will be provided to the adopted person unless she advises Tusla within 12 weeks, that she considers that there are compelling reasons not to release this information.

**14. Can an adopted person apply for details of his/her birth fathers name?**

Where a birth father was consulted in relation to an adoption and he has not registered his details on the Register and the adopted person has given an undertaking not to contact his/her birth parent, he/she can be provided with details of his/her father's forename and surname, as held on record.

Where a birth father has registered his details on the Register, Tusla will notify him, in writing, of the adopted person's application for details of his forename and surname. He will be offered support and guidance by Tusla and advised that the adopted person has also been also been offered support and guidance. The birth father will be advised that the information will be provided to the adopted person unless he advises Tusla within 12 weeks, that he considers that there are compelling reasons not to release this information.

Where there are details of the birth father's name on record and he was not consulted in relation to the adoption and he has no entry on the register, Tusla will seek to locate the birth father to notify him, of the adopted person's application for details of his forename and surname. He will be offered support and guidance by Tusla and advised that the adopted person has also been offered support and guidance. The birth father will be advised that the information will be provided to the adopted person unless he advises Tusla within 12 weeks, that he considers that there are compelling reasons not to release this information.

**15. What are compelling reasons?**

Compelling reasons are reasons, that having regard to all the circumstances, are likely to endanger the life of a person.

**16. What happens if Tusla considers that there no compelling reasons?**

Where Tusla, having considered any information, either provided by a birth parent or otherwise available to it determines that there are no compelling reasons, it will notify the birth parent. The birth parent may appeal the determination to the Circuit Court. Any court hearing will be held in private.

**17. What happens if Tusla considers that there are compelling reasons?**

Where Tusla having considered any information, either provided by a birth parent or otherwise available to it, considers that there are compelling reasons, it will refer the matter to the Circuit Court for determination. Any court hearing will be held in private.

**18. What happens if the Court agrees that there are compelling reasons not to provide the information?**

Tusla will advise the adopted person of the Circuit Court's determination. An adopted person can appeal this determination to the High Court.

**19. What happens if the Court determines that there are no compelling reasons not to provide the information?**

Tusla will advise the birth parent of the Circuit Court’s determination. A birth parent can appeal this determination to the High Court.

**20. When can the birth certificate information be provided to the adopted person?**

Where Tusla, the Circuit Court or the High Court (where there was an appeal) determines that there are no compelling reasons to refuse to provide the information or the period of time to appeal any determination has expired, the birth certificate information can be provided to the adopted person, once he/she has given an undertaking agreeing not to contact his/her birth parent.

**21. Can an adopted person request a copy of his/her adoption order?**

An adopted person aged 18 and over may apply for a copy of his/her adoption order. This request will be dealt with in the same manner as a request for birth certificate information.

**22. What other information will be available to an adopted person whose adoption was effected prior to the operation of the proposed legislation?**

An adopted person aged 18 and over can be provided with the following information, where it is held on record;

- Birth relative information
- Birth parent information
- Early life information
- Medical information
- Medical information relating to a birth relative

Definitions of the above terms are included on page 7 and 8.

**ADOPTIONS ORDERS MADE AFTER COMMENCEMENT OF THE BILL**

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**23. What information will be available to an adopted person aged 18 years and over, whose adoption takes place after the proposed legislation comes into operation?**

For all adoptions that take place after the legislation comes into operation, an adopted person on reaching 18 years of age will be entitled to a copy of their birth certificate and other information relating to themselves and their birth family. The birth parent will be notified 12 weeks in advance of the proposed release of this information.

For all adoptions that take place after the legislation comes into operation the birth parent and adoptive parents will be advised of these arrangements by Tusla prior to the adoption order being made.

**QUESTIONS RELEVANT TO ALL ADOPTIONS**

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**24. What information will be available to a birth parent about an adopted person over 18 years of age?**

A birth parent can be provided with any information regarding the adopted person, once the adopted person aged 18 years or agrees to its release.

**25. What happens if consent to release information is required and the person is deceased, or cannot be found?**

Where consent to release information is required and where the person to whom the information relates is deceased or the Minister is satisfied that the person cannot be located following specific steps having been taken by Tusla, provision is made for the release of the information.

**26. What information will be available to a birth parent about an adopted child under 18 years of age?**

A birth parent may request information about the adopted child's general wellbeing up until the child is aged 18 years. Tusla will request this information from the adoptive parent and will facilitate the exchange of this information between the parties. Information can only be provided to the birth parent with the consent of the adoptive parent. The adoptive parent is under no obligation to provide this information.

The type of information that may be requested includes information about the child's health, social and educational development and general well-being. Letters, photographs or other mementos and any other information can be provided by the adopted parents to Tusla for the purpose of releasing that information to the birth parent. Information for release to a birth parent will be limited to the information the adoptive parents provide for that purpose.

**27. What information will be available to adoptive parents about the adopted child under 18 years of age?**

An adoptive parent may request information that is held by Tusla or the Authority, or that Tusla request from a birth parent, where the child is aged under 18 years. Adoptive parents may request birth relative information, birth parent information, early life information, medical information, medical information relating to a birth relative. The adoptive parent may apply for a copy of the Birth Certificate and the adoption order, which can be released where the birth parent agrees or where the birth parent is deceased.

**28. Can a person appeal a decision?**

A person who is not satisfied with a determination of either Tusla or the Authority can appeal to the Court.

## Definitions

### **“An adopted person”**

The proposed legislation defines “an adopted person” as a person-

- (a) *adopted under an adoption order,*
- (b) *born in the State and placed for adoption outside the State by An Bord Uchtála, a registered adoption society the Authority or the Agency, whose adoption was effected outside the State,*
- (c) *otherwise adopted in accordance with the law in force in the State at the time of that adoption;*

### **“Relevant person”**

The proposed legislation defines a “relevant person” as

- (a) *an adopted person, (as defined above)*
- and*
- (b) *a person who has been the subject of an informal care arrangement, or*
- (c) *a person who is or has been the subject of a wrongful registration;*

### **“Birth certificate information”**

The proposed legislation defines “birth certificate information” , in relation to a person as —

- (a) *his or her forename and surname at the time of his or her birth,*
- (b) *the date of his or her birth,*
- (c) *the place at which he or she was born, and*
- (d) *the forename and surname of the person’s birth mother at the time of the birth mother’s birth;*

### **“Birth parent information”**

The proposed legislation defines “birth parent information” as information about a birth parent at the time of the birth of the child as follows -

- (a) *his or her age;*
- (b) *his or her civil status;*
- (c) *in the case of the person’s birth mother, and where applicable, the date of her entry into, and discharge from, the place at which the birth took place;*
- (d) *the county in Ireland in which he or she resided;*
- (e) *the county or counties in Ireland in which he or she resided prior to the birth;*
- (f) *the places outside the State in which he or she resided prior to the birth;*
- (g) *his or her nationality, religion (if of any religion), race and ethnicity;*
- (h) *the education and training received by him or her;*
- (i) *his or her occupation;*
- (j) *his or her talents, hobbies and special interests;*

**“Birth Relative Information”**

The proposed legislation defines “*birth relative information*” as :

- (a) whether the person has a birth relative, whether living or deceased;
- (b) where the person has a birth sibling—
  - (i) the sex of the birth sibling, and
  - (ii) whether the birth sibling is older or younger than the person;

“*birth sibling*” means, in relation to a person, a person who shares the same birth mother or birth father, or both, as him or her;

“*birth relative*” means, in relation to a person—

- (a) a relative of his or her birth mother or birth father, or
- (b) a person who would, but for the adoption of any person, be a relative of his or her birth mother or birth father;

**“Early life information”**

“*Early life information*”, means, in relation to a relevant person, information about the relevant person in the period following his or her birth up to the time when an adoption order was made.

and includes—

- (a) *the place at which he or she resided and the person who was in charge of that place,*
- (b) *where applicable, the date and place of his or her baptism or any other ceremony of a religious or spiritual nature performed in the period in respect of him or her,*
- (c) *where applicable, the name of a body that made arrangements for his or her adoption, and*
- (d) *where applicable, the date on which he or she was made the subject of a foster care arrangement or placed with prospective adopters.*

**“Medical Information”**

“*medical information*” means, in relation to a person, information relating to his or her medical history,

“*medical information relating to a birth relative*” means, in relation to a person, information relating to the medical history of a birth relative of the person, which the Agency is satisfied, having regard to any guidelines is, or is likely to be, of relevance to the maintenance or management of the physical or mental health of the person or of a relative of the person;