

THE GENERAL SCHEME AND HEADS OF THE BIRTH INFORMATION AND TRACING
BILL 2021

Pre-legislative scrutiny by the Joint Committee on Children, Disability, Equality
and Integration

Adoption Authority of Ireland Opening Statement

Birth Information & Tracing Legislation

1. Introduction

The Adoption Authority of Ireland welcomes the opportunity to give inputs to this historical bill. For the first time in Ireland's history, critical information, including original birth certificates and important medical information, will be made available to adult adoptees.

The Authority believes this draft legislation is a thoughtful rebalancing of rights to identity and provision of supports to all those, including birth mothers, who will be affected by the legislation.

The Authority is of the view that the Bill reflects the obligations imposed on the State under the General Data Protection Regulation and the Data Protection Act 2018.

Moreover, it meets the requirements of the European Convention on Human Rights (ECHR). In this regard, Article 8 of the ECHR has been construed as requiring the Contracting State's to protect the right of a person to information concerning their identity and origins (**Mikulić v. Croatia** (no. 53176/99, §§ 54 and 64, ECHR 2002-I; **Godelli v Italy** (33783/09; September 25, 2012)).

UN Convention on the Rights of the Child

The UN Convention on the Rights of the Child (CRC) was ratified by Ireland on 21 December 1992 without reservation and, as such, is binding on the State, albeit not on the domestic courts. While the Bill envisages the provision of identity information to adult adoptees the principles enunciated in the CRC on this issue provided a useful framework for drafting legislation in this area.

Of particular relevance to the within discussion are Articles 7 and 8, headed 'Name and Nationality' and 'Preservation of Identity', respectively. Article 7 provides as follows:

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8 is in the following terms:

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name, and family relations as recognized by law without unlawful interference.
2. Where a child is legally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate

assistance and protection, with a view to re-establishing speedily his or her identity.

The right to know one's parents expressed in article 1(1) has been construed by the relevant international law agencies as enshrining a right of the child to knowledge of origins. Thus, the Committee on the Rights of the Child, in comments regarding the United Kingdom's compliance with the UN Convention, made the following recommendation:

In light of articles 3 [best interests of the child] and 7 of the Convention, the Committee recommends that the State party take all necessary measures to allow all children, irrespective of the circumstances of their birth, and adopted children to obtain information on the identity of their parents, to the extent possible. (Great Britain and Northern Ireland CRC/C/15/Add 188)

A similar view of the extent of the obligations imposed on contracting states by Article 7 has been expressed in the academic commentary. McDonald, for example, observes.

*In order to preserve the identity of a child the child must have full knowledge of each of the components of his or her identity. This will include his or her birth parents...The adopted child's right under Art 7(1) as far as possible to know and be cared for by his or her parents will encompass the child's birth parents as well as his or her adoptive parents. (A. McDonald, *The Rights of the Child: Law and Practice* (2011) at 7.39-7.40.)*

2. NACPR

The Authority notes its significant experience in operating the NACPR for the last 16 years. We welcome the fact that all data of 13,800+ registered parties will be retained and that the Authority will oversee the new register as outlined in the Bill.

3. Time frames

We have concerns related to the short window of 3 months and believe it will take 6-12 months minimum to advertise in Ireland and beyond to communicate and disseminate the key messages and the changes the legislation will bring. It is critical that as many people as possible are reached in order to encourage huge participation in this historical scheme.

4. Resources

The Authority notes that it will require significant additional resources in the area of records and information management, archivist resources, administration and social work in order to provide an excellent and timely service from day one of enactment of the legislation. The Authority is aware that very large numbers of persons will wish to apply for their birth certificates, early life and medical information in addition to those who may wish to register and be supported in a No Contact preference.

There will be a grave impact on the provision of timely services if resources are not put in place in advance of enactment. Due to limited resources and challenges in recruiting social workers, the Authority currently has a two-year-plus waiting list for services.

5. Early life information

What will the definition of early life information encompass? Is this only information up to the time a baby was placed with adoptive parents? Information may subsequently have been placed on file when the adopted person was under 16. Should this be included as 'early life information'?

Should birth mothers be encouraged to provide information on the adult adoptees' birth fathers and can a section be added to the new registration form to facilitate this, even in the event that birth mothers are registering a No Contact preference?

6. Release of medical information

This area will require careful and considered operational procedures as medical information is personal sensitive data. Release of medical information to nominated medical practitioner may in fact result in an adopted/fostered person knowing that the information relates to the birth mother in situations where, for example, she is an only child or only has male siblings. If medical information is subsequently added to the register, how is this information to be shared with relevant party? We are pleased that critical medical information should and will be given to adult adoption. However, the Authority notes that it will require careful consideration and the Authority will require expert medical advices.

7. Nominated medical practitioner

Regarding a nominated medical practitioner, there will need to be guidelines on how this process would work – for example, how the Authority verify the credentials of the nominated medical practitioner, and any GDPR issues associated with sharing sensitive medical data with a registered GP or other medical person as nominated.

8. Release of adoptee birth certificates

Clarity will be required on who exactly is responsible for the release of adoptee birth certificates. In most cases, the adoption files held by the Authority contain copies of original birth certificates. The proposed legislation also suggests that Tusla could fulfil this role. Given that the Authority usually provides Tusla with a copy of the certificate, it would seem counterintuitive to expect Tusla to provide this service as they would have to approach the Authority on behalf of the adoptee, thereby prolonging the process.

We would ask that if there is correspondence on the adoption file, unrelated to the register, yet clearly confirming a No Contact preference, this No Contact can be considered as part of the release of a birth certificate. In some instances birth mothers have written (themselves or via a solicitor) to strongly indicate No Contact. This information will be on the adoption file but not on the NACPR/register.

Will the adult adoptee have a choice, which we believe is important, to request face-to-face support when receiving information? We note that the onus is on service provider to share sensitive information in a way that is in the best interest of the service user. Some adult adoptees may not wish to meet a social worker and could, we believe, meet another staff member in the Authority.

9. Regarding release of information aged under 18

We would ask that particular attention and thought is given to 16-18 year olds. Regarding release of information to applicants aged 16-17 years, will this take place in an information session, or will the procedure be the same as for those over 18? It is not assumed that they will require or seek additional supports in receiving information. However, in instances where they do, we believe this should be available and provided in a child-centred and informal manner. The Authority intends to work with the OCO to develop appropriate child-focused approaches to this cohort.

10. Counselling for birth parents

Will counselling be made available to birth parents who register a No Contact preference? Will the same service be given to those who are registering for contact or who are trying to decide what is the best option for them?

We believe the Bill should also strongly reference birth fathers and allow birth fathers to register No Contact should they wish and also to allow birth fathers to avail of support services.

Can adopted people register a No Contact preference? Can other people register No Contact e.g. adoptive parents where adopted person is deceased, relatives of birth mother or birth father, or other parties who do not want to be approached when birth mother/father is deceased? Can foster parents register No Contact?

Will a No Contact preference continue indefinitely? Is a contact preference too restrictive – is there a failure to take into consideration that those who lodged one might want to change their minds after a period of time?

11. Circumstances where a No Contact preference can be overruled

The Authority wishes to raise a number of questions with respect to 'No Contact preference'. Are there any circumstances where a No Contact preference can be overruled, for example, an adoptee or a relative is ill and up-to-date medical information is urgently required? Can a system be put in place whereby the Authority can return to the person who has lodged the No Contact preference and inquire whether he or she wishes to retain or revoke the No Contact preference?

Regarding the procedures for registering No Contact, what is acceptable if a person is unwilling or unable to provide photo ID and complete the register? Could another person register on behalf of that person? Could another party (solicitor, family member etc.) register

a No Contact preference on behalf of, for example, a birth mother? This is important to give choice and supports to those coming forward to place details on the register.

Can birth parents apply to get their children's birth and adoption records? Could this be included in proposed legislation?

The Authority believes that consideration needs to be given on the implications of releasing personal information, for example, a person named as birth father on record which later proves to be incorrect. Releasing this information, which has not been confirmed with birth mother, may have implications for the person concerned and, if he is deceased, for his family.

12. Consideration of the implications of releasing other information

We would ask that careful thought is given to the implications of releasing other information not confirmed by the birth mother e.g. true relationship with birth father not noted at time. Some women did not speak in the past of the fact that their children were conceived through incest or rape. Again, the Authority believes a range of supports should be made available for those who wish to receive them, including counselling, advocacy and other required supports.

13. Media campaign

The Authority would welcome receiving the media/publicity pack from Tusla regarding extensive preparations that were already made in 2016, in order to avoid duplication of the huge work and consultations that took place at that time. The Authority has a positive and collaborative working relationship with Tusla and will continue to engage with Tusla on all matters related to the Bill.

The Authority intends to publish the key messages of the legislation not only in Ireland but throughout the world, acknowledging the Irish adoption diaspora are living around the world, in particular in the UK, the USA, Australia, Canada and beyond. We would urge the Oireachtas to consider – as took place in 2005, when the NACPR was launched – that each household in Ireland would receive a copy of the key provisions of the legislation and plain English information on how to register and/or and access information/supports they may require.

We look forward to collaborating with colleagues in Tusla and also hearing from support groups and other adoption service providers how best to communicate the critical information on the new Bill and how to implement its key provisions in a timely, professional and considered manner for all.

Conclusion

I would like to thank you very much for taking time to listen to the Authority perspective and we would be happy to answer any questions you might have.