

ADOPTION (INFORMATION AND TRACING) BILL 2015

QUESTIONS & ANSWERS

1. What is the purpose of the legislation?

The Adoption (Information and Tracing) Bill provides for structured and regulated access to information and tracing services for those affected by adoption. It provides for access to adoption 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 Bill establishes a proactive Adoption Information Register and provides for the safeguarding of all adoption records.

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

There will be a high profile information campaign for one year after commencement to promote 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 to adopted people and birth parents and the circumstances in which it can be provided. In particular, it will outline that an adopted person aged 18 years and over will be entitled to the information required to apply for their Birth Certificate, subject to the adopted person signing a statutory declaration not to contact their birth parent, unless the birth parent has indicated a preference for contact, in which case the statutory declaration is not required. Birth parents will also be made aware that they may indicate a preference of 'no contact at present' on the Adoption Information Register, where they do not wish to have contact with an adopted person at this time. Anyone entering their details on the Adoption Information Register can change their contact preference at any time.

The information campaign will encourage adopted people and birth parents to enter their details on the Adoption Information Register 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. Will there be support for adopted people and/or birth parents?

The Bill provides that a Tusla social worker will offer information and support to adopted people, birth parents, and relatives at all stages of the information and tracing process. Where it is considered appropriate and helpful, a social worker may refer a person to HSE National Counselling Services or other appropriate services.

ADOPTION INFORMATION REGISTER

4. What is the Adoption Information Register?

A new Adoption Information Register is to be established and operated by Tusla. 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 do not wish to have contact at present. 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.

5. How will the Register operate?

The Adoption Information Register will be proactive. A person applying to have their details entered on the Register will indicate if they are seeking information, are willing to provide information and/or their preferences regarding contact with the other person. Tusla will commence a search for the person with whom they wish to share information and/or have contact to advise them of the applicant's wishes. Any contact and sharing of information between the two parties will be facilitated by Tusla social workers.

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 will be discontinued. Before the new Register is established, the Authority will send an information pack, an application form and a freepost envelope to each person whose details are on the National Adoption Contact Preference Register advising them of the new Adoption Information Register that is being established by Tusla. They will be invited to apply to have their details entered on the new Register.

ADOPTION RECORDS

7. How will adoption records be dealt with?

Adoption records are currently held by the Adoption Authority of Ireland, the Child and Family Agency and agencies accredited under the Adoption Act 2010. The Department acknowledges the historical significance of these records and appreciates the importance of these records for adopted people, birth parents, and relatives. The Bill provides that the Adoption Authority of Ireland will be responsible for the collection, restoration, preservation, storage and safeguarding of all adoption records.

8. What types of records are in existence?

The Adoption Authority of Ireland holds an individual record of each adoption effected since the Adoption Act 1952. Many of the older records are not individual files but they are 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.

ADOPTIONS EFFECTED *BEFORE* COMMENCEMENT OF THE BILL

9. Will an adopted person whose adoption was effected prior to commencement of the Bill be provided with their Birth Certificate?

An adopted person aged 18 years or over who was adopted prior to commencement of the Bill will be provided with the information required to apply for his or her Birth Certificate, following a request to Tusla – the Child and Family Agency for same and subject to certain conditions.

10. What are the conditions that must be complied with prior to release of information to apply for a Birth Certificate?

Where an adoption was effected prior to the commencement of this Bill, the information required to apply for a Birth Certificate will only be provided to an adopted person, after signing a statutory declaration before a notary public or a commissioner of oaths or a peace commissioner. The adopted person will undertake to (i) respect the privacy of their birth parent; (ii) not to contact their birth parent; (iii) not to ask anyone else to make contact on their behalf and (iv) to seek assistance from Tusla – the Child and Family Agency’s Information and Tracing Services if they wish to seek further information from, or have contact with their birth parent.

11. Will adopted people be entitled to the information to apply for their Birth Certificate immediately?

There will be an initial period of one year after commencement of the Bill for an awareness campaign to publicise the provisions of the Bill and to allow birth parents to indicate on the Register if they want ‘No contact at present’ or otherwise. After this, adopted person will have a statutory entitlement to the information required to apply for their Birth Certificate. Of course during this initial year, a Birth Certificate can be provided to an adopted person with the consent of the birth parent consents to its release.

12. Will a birth parent be advised in advance that information to apply for a Birth Certificate will be provided to an adopted person aged 18 years and over?

When the 12 month period has expired and an adopted person has applied for the information required to apply for a Birth Certificate and the birth parent has registered on the Adoption Information Register, Tusla will notify the birth parent, in writing, of its intention to provide the adopted person with the information required to apply for his or her Birth Certificate at least 12 weeks prior to its release. The birth parent will also be advised that the adopted person must sign a statutory declaration before the details to apply for a Birth Certificate can be released. The birth parent will be offered appropriate support and guidance by a social worker and will be advised that the adopted person has also been offered support and guidance.

Only a birth parent that has entered details on the Adoption Information Register will be notified of the proposed release to the adopted person of the information necessary to make an application for a Birth Certificate. However, the requirement to sign a statutory declaration will be necessary even where a birth parent has not registered on the Adoption Information Register.

There is a presumption in favour of the disclosure of the information required by the adopted person to apply for his or her Birth Certificate, unless the birth parent indicates that there are compelling reasons, such as may endanger the life of a person, for the non-release of the details required to apply for a Birth Certificate. Tusla will consider any case submitted and decide if the required information is to be disclosed.

13. Is there a sanction for breach of a statutory undertaking?

It is not proposed to include any criminal sanctions in the Bill for non-compliance with the statutory declaration signed by the adopted person. In the event of non-compliance a person may rely on the provisions of civil law.

14. What other information will be available to an adopted person aged 18 years and over whose adoption was effected prior to the commencement of the Bill?

Any additional identifying information will be disclosed to an adopted person with the consent of the birth parent concerned. This includes specific information requested by the adopted person and other information that could identify birth parents.

ADOPTIONS EFFECTED *AFTER* COMMENCEMENT OF THE BILL

15. What information will be available to an adopted person aged 18 years and over whose adoption is effected after the commencement of the Bill?

For all adoptions that take place after the Bill is commenced, an adopted person on reaching 18 years of age will be entitled to a copy of their Birth Certificate, adoption certificate and other information relating to themselves and their birth family. The birth parent will be made aware of this at the time of the adoption and will be notified 12 weeks in advance of the proposed release of this information.

The birth parent and adoptive parents will be advised of these arrangements by the Agency and the Authority as appropriate during the assessment and adoption process.

QUESTIONS RELEVANT TO ALL ADOPTIONS

16. What information will be available to a birth parent in respect of an adopted person over 18 years of age?

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

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

Information can be provided without consent, where the person to whom the information relates is deceased, or where the Adoption Authority is satisfied that the person cannot be located following reasonable steps having been taken by Tusla. Provision will also be made for a Court procedure to

dispense with consent where the person concerned cannot give consent because of incapacity to do so.

18. What information will be available to a birth parent in respect of 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 Agency must regard the best interests of the child as the paramount consideration.

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.

19. What information will be available to adoptive parents in respect of the adopted child under 18 years of age?

An adoptive parent may request non-identifying information from the birth parent where the child is aged under 18 years. This information could include information relating to the child’s health prior to the child’s placement for adoption, letters photos or other mementos and/or information specifically requested by the adoptive parent. Tusla will request this information from the birth parent and will facilitate the exchange of this information between the parties. The birth parent is under no obligation to provide this information. The Agency must regard the best interests of the child as the paramount consideration.

An adoptive parent will be provided with non-identifying information relating to the child at the time of the adoption. A Birth Certificate or adoption order will not be provided at this time, as these would identify the birth parent. The adoptive parent may apply for a copy of the Birth Certificate and the adoption order, which can be released with the consent of the birth parent.

20. What information will be available to a person whose name is entered in the Register of Intercountry Adoptions

An adopted person whose adoption is registered on the Register of Intercountry Adoptions may avail of information and tracing services. Tusla will provide an applicant with information relating to his or her adoption, held on record, in accordance with the law in the country of origin. Where the adopted person seeks additional information, the Authority may seek the information from the Central Authority of the country of origin, for the purpose of providing additional information to the adopted person.

21. Can a person appeal a decision?

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

22. Are there any other measures proposed?

The Department has established an Information and Tracing Implementation Project team that is examining, in consultation with the Adoption Authority and the Child and Family Agency and stakeholders, the current organisational arrangements for records management and provision of information and tracing services with a view to identifying improvements. This work will continue in tandem with the development of the legislation.