

# OVERVIEW OF THE ADOPTION (INFORMATION AND TRACING) BILL

See the Department's Website for further information ([www.dcy.gov.ie](http://www.dcy.gov.ie))

## 1. Overview of the Bill

The Bill is intended to facilitate access to adoption information and operates on the basis of a **presumption in favour of disclosing information** in so far as is legally and constitutionally possible. Following commencement of the legislation, the provisions of the Bill will be publicised through a high profile public awareness campaign to ensure that all affected will be made aware of the new legal framework.

The Bill provides for the establishment of a proactive **Adoption Information Register**. People affected by adoption – whether adopted themselves, birth parents or relatives – who want to share information and/or express a preference in relation to making contact with a person they were separated from as a result of adoption, can apply to have their details entered on the Register. The Register is the gateway into the pro-active **Information and Tracing Service** which will facilitate information sharing and contact between adopted persons, birth parents and relatives.

The Bill provides that adopted people, birth parents, relatives, people who were in an informal arrangement where no adoption order was effected, and people whose births were incorrectly registered can apply for information and tracing services by applying to have his/her details entered on the Adoption Information Register. The Bill will also provide that a person whose name was entered on the Register of Intercountry Adoptions can request information by applying to have their name entered on the Adoption Information Register. A birth parent of a person who was adopted from another country may request a service by applying to have their details entered on the register.

Tusla, the Child and Family Agency, will be responsible for providing and operating the Register and related Information and Tracing Service to facilitate and support contact between parties as requested. The Bill also provides that the Agency will offer support and guidance to people who request contact and/or the sharing of information.

A high profile **public awareness campaign** will be conducted in the initial year after the Bill is commenced 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, before the adopted person will have a statutory entitlement to the information required to apply for their birth certificate under these provisions. During this initial year, a birth certificate can only be provided to an adopted person, where the birth parent consents to its release.

The Adoption Authority of Ireland will be responsible for collecting, restoring, preserving and safekeeping **adoption records**, including information relating to informal adoptions and people whose birth was incorrectly registered. It will set out the information that must be retained by the Authority for future adoptions and (insofar as it is available), for past adoptions, people whose adoption is entered in the Register of Inter Country Adoptions, informal adoptions and incorrect birth registrations.

## **2. Information for adopted people aged 18 years and over whose adoption was effected prior to the commencement of the Bill**

For adoptions that took place before this Bill is commenced, adopted people aged 18 years or over will be provided with the information required to apply for his or her birth certificate, following a request to the Tusla for same and subject to certain conditions as set out below.

The Bill provides that information that relates solely to the adopted person i.e. information about time spent in a nursery, early personal medical information etc. but which does not identify their birth parent, will be provided to the adopted person as soon as possible.

In addition, information which focuses on the adopted person but may incidentally include non-identifying information about his or her birth parents – including non-identifying information in relation to events that occurred after the adoption – can also be provided to an adopted person. The Agency will ensure that the identity and/or contact details of the birth parent are not provided to the adopted person when this information is released.

There will be an initial period of one year after commencement of the Bill for the 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 which the adopted person will have a statutory entitlement to the information required to apply for their birth certificate. During this initial year a birth certificate can only be provided to an adopted person with the birth parent’s consent.

When the twelve month period has expired and an adopted person has applied for the information required to apply for a birth certificate, the Agency will check the Register to see if the birth parent has registered. Where they have, the adopted person will be advised by a social worker of his or her birth parent’s preference as indicated on the Register. The Agency 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 twelve weeks prior to its release. The birth parent will also be advised that the adopted person must sign a statutory declaration before the information required to apply for a birth certificate can be released – unless the birth parent has expressed a preference for contact.

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, in order to protect the right to privacy, 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. The Agency will consider any case submitted and decide if the required information is to be disclosed.

When an adopted person has made the statutory declaration, s/he will be provided with the required details to apply for his or her birth certificate. The Heads provide that an adopted person or a birth parent who is not satisfied with the outcome of the process can appeal to the High Court.

The Bill provides that 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. It will also provide for circumstances where this information can be provided without consent i.e. where the person to whom the information relates is deceased, or where following reasonable steps having been taken by the Agency, that person cannot be located. The Bill will also provide for a Court procedure to dispense with consent where the person concerned cannot give consent because of incapacity to do so. In addition, provision will be made for an adopted person or a birth parent who is not satisfied with the outcome of the process to appeal to the Court.

### **3. Information for adopted person aged 18 years and over whose adoption was effected after the commencement of the Bill**

For all adoptions that take place after the commencement of this Bill Tusla can provide a copy of a birth certificate, an adoption order and other information to an adopted person, following application by the adopted person.

When the Agency receives an application for this information, it will be required to notify the parent/guardian who placed the child for adoption, as well as a father consulted under the Adoption Act 2010, of its intention to disclose information to the adopted person at least twelve weeks prior to release.

There is a presumption in favour of the disclosure of information, unless there are compelling reasons, such as may endanger the life of a person, not to disclose. The Agency will consider same and decide whether the information is to be disclosed.

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

### **4. Information for birth parents in respect of adopted people aged 18 and over**

The Bill provides that a birth parent may apply to Tusla for information about an adopted person aged 18 years and over by applying to have his/her details entered on the Register. The adopted person must consent to the disclosure of any identifying information to a birth parent before it can be released.

The Bill will also provide for circumstances where this information can be provided without consent i.e. where the person to whom the information relates is deceased, or where following reasonable steps having been taken by the Agency, that person cannot be located. The Bill will also provide for a Court procedure to dispense with consent where the person concerned cannot give consent because of incapacity to do so. In addition, provision will be made for an adopted person who is not satisfied with the outcome of the process to appeal to the Court.

These provisions will apply to adoptions effected both before and after the commencement of the Bill.

#### **5. Information for birth parents in respect of adopted child aged under 18 years of age**

The Bill provides that a birth parent may apply to go on the Adoption Information Register to seek information about his/her child who is under 18 years of age, and Tusla will make a request to the adoptive parent in this regard. The adoptive parent will be under no obligation to provide any information and 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 adoptive parents to the Agency 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.

These provisions will apply to adoptions effected both before and after the commencement of the Bill.

#### **6. Information for adoptive parents in respect of adopted child aged under 18**

The Bill provides that Tusla will ask the birth parent to provide non-identifying information for the purpose of this information being given to the adoptive parent, following a request from the adoptive parent. This information could include information relating to the child's health before they were placed 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 information and the Agency must regard the best interests of the child as the paramount consideration.

The Bill will also provide that the adoptive parent may apply for a copy of a birth certificate and adoption order. However, this information will only be disclosed with the consent of the birth parent concerned. The Bill provides for circumstances where this information can be provided without consent i.e. where the person to whom the information relates is deceased, or where following reasonable steps having been taken by the Agency, that person cannot be located. The Bill will also provide for a Court procedure to dispense with consent where the person concerned cannot give consent because of incapacity to do so. In addition, provision will be made for an adopted person who is not satisfied with the outcome of the process to appeal to the Court.

These provisions will apply to adoptions effected both before and after the commencement of the Bill.

## **7. Information to be provided to a person whose name is entered in the Register of Intercountry Adoptions**

The Bill provides that an adopted person whose adoption is registered on the Register of Intercountry Adoptions may apply to be registered on the Adoption Information Register to avail of information and tracing services. The Bill provides that Tusla - the Child and Family Agency shall provide an applicant with information relating to his or her adoption where such information is held by the Adoption Authority and where the Agency has been given approval by the Authority to disclose the information to the applicant. The information to be provided is limited to the information that is held on record. Where the adopted person seeks additional information (i.e. information not held by the Authority) the Agency may request the Authority to seek the information from the Central Authority of the country of origin, for the purpose of providing additional information to the adopted person. Information that is provided to the Authority by the Central Authority in the country of origin for release to the adopted person is forwarded by the Authority to the Agency for release to the adopted person.

## **8. Information for relatives and others**

The Bill provides that a relative of a birth parent or adopted person may apply to Tusla for information about an adopted person aged 18 years and over or a birth parent, as the case may be, by applying to have his/her details entered on the Adoption Information Register. The Bill will also allow a person other than a relative to apply to the Agency in a similar manner, once the Agency is satisfied that this would promote the welfare of the adopted person or birth parent as the case may be. This could include a friend or confidant of the birth mother during pregnancy that could be a source of information for an adopted person, where a birth mother has passed away.

The person to whom the information relates must consent to the disclosure of any identifying information before it can be released. The Bill will also provide for circumstances where this information can be provided without consent i.e. where the person to whom the information relates is deceased. The Bill will also provide for a Court procedure to dispense with consent where the person concerned cannot give consent because of incapacity to do so.

## **9. Information for people who were the subject of informal adoptions and wrongful registrations**

The Bill provides that people who were:

- the subject of 'informal adoptions' i.e. a long-term family care arrangement, where a child is in the custody of a person other than his or her parent or guardian, and where no adoption order was effected; and/or
- the subject of a 'wrongful registration' i.e. the incorrect registration of a birth under the Civil Registration Acts for the purpose of registering as a parent a person who is not a parent of that child

may apply to have their details entered on the Adoption Information Register to avail of information and tracing services. It will also provide that birth parents of people subject to these arrangements may apply to Tusla for information in the same way. Such people must have reasonable grounds to believe that they are the subject of such arrangements.

People who were the subject of these arrangements can be provided with information, where available, in a similar manner to the provision of information to adopted people whose adoption was effected prior to commencement and birth parents (where the adopted person is 18 years of age or more) above. However, it should be noted that many of these arrangements operated in conditions of great secrecy and there were rarely any contemporary written records of these events. In such cases there may be very limited information available, if any.

In addition, provision will also be made in the Bill for a balancing of rights of each party to the arrangement, in line with the judgement in the IOT–v–B case, where consent is not forthcoming. This balancing of rights can be provided as no adoption order was effected.