



**AN BILLE UCHTÁLA (FÉINIÚLACHT AGUS FAISNÉIS), 2014
ADOPTION (IDENTITY AND INFORMATION) BILL 2014**

EXPLANATORY MEMORANDUM

The bill is designed to do the following:

- Give all adoptees a right to their birth certs and other personal records once they reach the age of eighteen;
- Enable natural parents to request information about their adopted sons or daughters;
- Facilitate adoptees and their natural parents in exchanging contact details where they both wish to do so;
- Facilitate natural parents in providing their adopted sons and daughters with their family medical history through the Adoption Authority; and
- Ensure that all adoption records currently in the hands of adoption agencies, religious congregations, mother and baby homes and other bodies are delivered to the Adoption Authority so that they are centralised in one place and made available to adoptees and natural mothers.

Background

There are over 50,000 adopted men and women in Ireland. Unlike other countries, Irish adoptees do not have automatic right to their birth certificates listing their original names and their parents' details. As a result, they are denied basic information about themselves and their family history that other people take for granted.

Some adoptees simply want to get access to their birth certificates and early care records. Others would like medical information about their natural relatives to know if they are at risk of a serious inherited illness. Some would like to reach out to a natural parent and try to establish contact with them.

Many natural mothers have spent years looking for their adopted sons or daughters and would love to make contact with them. Others might prefer not to. Under the bill, both adoptees and natural parents may accept or decline to have their current contact details released.

Giving Adoptees A Right To Their Birth Certs

Adopted people in England have had a legal right to their birth certs, listing their original names and their parent's names since 1976. Almost forty years later, Irish adoptees still don't have this right.

Instead, they are given adoption certificates' listing their adopted name and the names of their adoptive parents.

Under this bill, adoptees would be able to get their birth certs once they reach the age of eighteen. This would bring Ireland into line, not only with the England, but also with best practice internationally and would ensure that the adoptee's right to their identity under Irish and international law is vindicated.

The Process Through Which Adoptees May Acquire Their Birth Certs And Other Records

1. The adoptee applies to the Registrar at the General Registration Office for their birth cert and/or other records regarding their adoption.
2. The Registrar notifies the Adoption Authority of the request.
3. The Adoption Authority must make reasonable efforts to contact the adoptee's mother and, where known, father and advise them of the request.
4. The natural parent(s) will be advised that their son or daughter's records will be released and will be asked to indicate if they would like to have their current contact details released also. The natural parent may accept or decline the opportunity to have their contact details released. They will have at least four months to advise the Authority of their wishes.
5. The parent will also be offered counselling to assist them in making a decision regarding contact.
6. Where a parent does not wish to have direct contact with their adopted son or daughter they may opt to provide them with the family's medical history so that the adoptee is aware of whether there is a history of serious inherited illness in the family.
7. Once the parent replies, or six months has elapsed since the adoptee made their application, the adoptee will be given access to their records, provided they have met the requirement in section 7 of the bill. The parent(s) wishes regarding contact, where known, will be conveyed back to the adoptee.
8. *Section 7* of the bill requires the adoptee to attend an advisory meeting with a social worker or counsellor before they will be given access to their records. At this meeting, they can discuss their feelings and their natural parent(s)'s wishes regarding contact (where known). The adoptee will only be required to attend one such meeting. However, depending on their individual circumstances, they may find additional consultations beneficial.

The process above is designed to ensure that both the adoptee and natural parent have appropriate support and can proceed in a way that suits their own individual needs and sensitivities.

Giving Natural Mothers Access To Information About Their Adopted Son's And Daughters

Under the bill, natural parents may also request information regarding their adopted sons and daughters. This includes their child's adoption certificate, listing their adopted name and the names of their adoptive parents.

Before any information is released, the Adoption Authority will

use the same process as outlined above to contact the adoptee. They will notify the adoptee of the request and give them the opportunity to decide if they would like their current contact details to be given to the parent or not.

The adoptee will have the right to refuse the release of any information to the natural parent if they so wish.

Natural parents may also seek access to other records regarding the adoption that do not identify the adoptee or their adoptive family. In addition, they will have an entitlement to records regarding their stay in a Mother and Baby Home and will be able to acquire these from the Adoption Authority rather than from the home directly.

Centralisation Of Records

The Bill also provides for the centralisation of all adoption records in one place. This is designed to provide easier access to such information and ensure that natural mothers and adoptees no longer have to deal with adoption agencies or mother and baby homes directly. It is also designed to assist people who were illegally adopted by ensuring that anyone with records of such 'adoptions' is required to hand them over to the Adoption Authority.

No Impact On The Adoptee's Legal Status

The Bill will not affect in any way the legal status of adopted people, their adoptive parents or their natural parents. For example, it will not give the adoptee any inheritance rights in respect of their natural parents.

What protections does the bill provide for natural parents who do not wish to be contacted by their sons or daughters?

Many women have spent years looking for their adopted sons or daughters and will be delighted to finally have the opportunity of contact with them. However, the bill provides a number of protections for those who would prefer not to be contacted.

Before any information is released to an adopted person, the Adoption Authority must make reasonable efforts to contact their natural parent(s). The parent will be given at least four months to advise the Authority as to whether or not they would like to have contact with their son or daughter. If a parent indicates that they don't wish to have such contact, their contact details will not be released. The adoptee will also be advised that their parent does not wish to be contacted by them.

Before an adoptee can get their birth cert, they must also meet with a social worker or counsellor. This meeting will give the adoptee an opportunity to discuss their own feelings and the need to respect their parent(s)' wishes regarding contact.

What is to stop adoptees tracking down their birth parents against their wishes once they have their birth certs?

There is a greater risk of unwanted contact under the current arrangements. Not having an automatic right to their birth certs doesn't necessarily make it impossible for adoptees to find their parents. It just makes it much harder. By carrying out their own detective work, adoptees may be able to identify their parents. In the absence of an intermediary service, their only way of contacting them is often to do so directly by letter or in person.

This bill will enable adoptees to reach out to their natural parents through the Adoption Authority, rather than having to do so

directly. It will also provide mothers with an opportunity to convey their wishes regarding contact to their adopted sons or daughters. This intermediary service will be a much more supportive and sensitive system for all concerned.

Protections For Adoptees Who Do Not Wish To Be Contacted By Their Natural Parents

The adoptee may accept or decline a request for identifying information to be given to their natural parent(s) and instruct the Adoption Authority to inform their parent(s) that they do not wish to be contacted by them.

The Legal Context For This Legislation

The United Nations Convention on the Rights of the Child expressly recognises the right of the child to preserve (Article 8.1) and know (Article 8.2) his or her identity. This right is also recognised by the European Court of Human Rights and the Irish Constitution. According to the Supreme Court in *I'OT v B*, an adoptee's right to their identity is not absolute and is subject, in particular, to the right to privacy of the natural parent. However, it also pointed out that the right to privacy does not automatically trump the right to identity. The court stated that the two rights must be balanced against each other. It is clear from Supreme Court decisions such as *Tuohy v Courtney* [1994] 3 IR 1 that the precise balance to be struck is a matter for the Oireachtas to determine. This bill achieves that balance in a way that is sensitive to the needs of all parties.

Part I

Section 1

This section provides that the Act shall come into force on such day or days as the Minister for Children and Youth Affairs shall nominate, subject to the requirement that the Minister shall bring all provisions in the Act into force within 6 months of the enactment of the Act. The purpose of this latter requirement is to ensure that the Act comes into operation within a reasonable timeframe.

Section 2

This is a standard interpretation section. The provisions of the Interpretation Act 2005 also apply to this Bill.

The definition of an adopted person includes a child adopted by virtue of an adoption order in Ireland as well as a child born in Ireland who has been placed for adoption in another state. It also includes a child who was the subject of an informal adoption, as defined in the section.

Part II

Sections 3 and 4

The broad purpose of Part II is to allow an adopted person aged 18 or over to access—

- (a) His or her original birth certificate (section 3) and
- (b) Personal data relating to his or her birth, placement for adoption, arrangement for adoption or adoption (section 4) (including, where known, the current contact details of the natural parent).

The Bill confers such rights notwithstanding the provisions of any enactment other than the Act itself.

The right to apply for a birth certificate or personal data is contingent on certain steps being taken by both the Adoption Authority (section 5) and by the adopted person (section 7).

Section 5

Where an application is made under sections 3 or 4 or both, the Adoption Authority must take reasonable steps to identify and contact the natural parents of the adopted person. The Authority is required also to give certain information to the natural parents, and to offer them support and counselling.

The Adoption Authority must take reasonable steps to identify and contact the natural parents to inform them of the application and of other matters. In line with a recent decision of the High Court, reasonable steps shall be taken to mean such steps as are reasonable, subject to the requirement to act with discretion and with due respect for the privacy of all persons concerned.

The Authority must act within a set timeframe. Where the natural parents cannot be identified or cannot be contacted, the Authority may nonetheless be deemed to have taken the reasonable steps contemplated by this section. If the Authority does not act within 90 days of receiving an application under section 3 or section 4, this section shall not apply, and the adopted person may access a certificate of birth or information provided the conditions in section 7 have been satisfied.

Section 6

Section 6 allows a natural parent to make known their wishes regarding contact with the adopted person. A natural parent may indicate that he or she wishes to be contacted (subject to conditions, if desired) or that he or she does not wish to be contacted.

While the Bill requires the privacy rights of the natural parent to be given due weight, it does not grant a veto to the natural parent in relation to the issuing of a certificate of birth or of information. It simply requires that the adopted person be informed of that wish.

Section 7

Where the adopted person wishes to obtain information under the Act, he or she person shall be required to meet with a social worker or counsellor to discuss and consider the application. The meeting should address, in particular, the privacy rights of the natural parent.

Part III

Part III allows the natural parent of an adopted person to obtain information relating to the adopted person. This right applies only where the adopted person is aged 18 or over and is subject to certain conditions.

Section 8

This section allows a natural parent to obtain information from one or more of a number of bodies and persons, subject to the conditions set out in sections 9, 10 and 11. Such information may relate to the birth or adoption of an adopted person, including contact details for that person.

Section 9

Where a request is made under section 8 the Adoption Authority must take reasonable steps to identify and contact the adopted person. The Authority is required also to give certain information to the adopted person, and to offer him or her support and counselling.

The Adoption Authority must take reasonable steps to identify and contact the adopted person to inform him or her of the application and of other matters. In line with a recent decision of the High Court, reasonable steps shall be taken to mean such steps as are reasonable, subject to the requirement to act with discretion and with due respect for the privacy of all persons concerned.

The Authority must act within a set timeframe. Where the adopted person cannot be identified or cannot be contacted, the Authority may nonetheless still be deemed to have taken the reasonable steps contemplated by this section. If the Authority does not act within 90 days of receiving an application under section 3 or section 4, this section shall not apply, and the natural parent may access information provided the conditions in section 10 and 11 have been satisfied.

Section 10

This section allows an adopted person to make known his or her wishes regarding contact with the natural parent. An adopted person may indicate that he or she wishes to be contacted (subject to conditions, if desired) or that he or she does not wish to be contacted.

This section allows the adopted person to expressly indicate that he or she does not want to have their information shared with the natural parent, in which case the request under section 8 shall be denied.

Section 11

Where the natural parent wishes to obtain information under the Act, he or she shall be required to meet with a social worker or counsellor to discuss and consider the application. The meeting should address, in particular, the privacy rights of the adopted person.

Part IV

Section 12

This section is designed to ensure that adoption records held by various persons and bodies be centralised, such that the Adoption Authority will have access to all relevant records relating to a person's adoption. Such bodies and persons are required, within 1 year of the coming into operation of the section, to deliver copies of all relevant information to the Adoption Authority. This will centralise all adoption records in one place, ensuring easier access to these records.

Part V

Section 13

Section 13 requires the Authority, in fulfilling its functions under this Bill, to make every reasonable effort to ensure that the health (including psychiatric health) and emotional welfare of the adopted person, the natural parents and the adoptive parents is safeguarded.

Section 14

Section 14 clarifies, for the avoidance of any doubt, that the Bill does not affect the legal status of any person. In particular, where an adoption order is granted, the natural parent, as a matter of law, is no longer the parent of a child. The adoptive parents under an adoption order acquire all rights and responsibilities in respect of the adopted person. This will remain the case under this Act.

Section 15

This section allows the Minister for Children and Youth Affairs to make regulations to give effect to the provisions of this Act.

Samhain, 2014.