

**DRAFT HEADS AND GENERAL SCHEME OF  
BIRTH INFORMATION AND TRACING BILL**

---

CONTENTS

PART 1  
PRELIMINARY AND GENERAL

PART 2  
ACCESS TO BIRTH CERTIFICATES

PART 3  
ACCESS TO INFORMATION AND RECORDS

PART 4  
TRACING

PART 5  
CONTACT PREFERENCE REGISTER

PART 6  
SAFEGUARDING RELEVANT RECORDS

PART 7  
AMENDMENT OF CIVIL REGISTRATION ACT

PART 8  
MISCELLANEOUS

SCHEDULE 1  
LIST OF INSTITUTIONS

The purpose of this General Scheme is to recognise the importance of a person knowing his or her origins; to achieve this through the provision of access for the person to his or her birth certificate, birth information, early life information, care information and medical information; to provide this access for all persons who were adopted, nursed out, boarded out, the subject of an incorrect birth registration or who otherwise have questions in relation to their origins; to provide for a statutory tracing service for relevant persons and their relatives; to provide for a statutory Contact Preference Register for relevant persons and their relatives; to provide for the safeguarding of records relevant to establishing a relevant person's origins; to provide for amendments to the Civil Registration Acts in relation to individuals whose birth was incorrectly registered, and to provide for related matters.

**PART 1**  
**PRELIMINARY AND GENERAL**

**Head 1 - Short title and commencement**

*Provide along the following lines:*

- (1) This Act may be cited as the Birth Information and Tracing Act 2021.
- (2) This Act comes into operation on such day or days as the Minister may appoint by order or orders, either generally or with reference to any particular purpose or provision and different days may be appointed for different purposes or different provisions.

**Explanatory Notes**

These are standard provisions.

## Head 2 - Interpretation

*Provide along the following lines:*

In this Act:

“Act of 2010” means the Adoption Act 2010;

“adoption order” has the same meaning as it has in the Act of 2010;

“Agency” means the Child and Family Agency;

“AIRR Archive” means the database of historical child care records compiled by the Department of Health under the Access to Institutional and Related Records Project.

“Authority” means the Adoption Authority of Ireland;

“authorised officer” means an authorised officer appointed under Head 28 [Search Powers];

“birth certificate” means a document issued under section 13 (4) of the Civil Registration Act 2004;

“birth information” means the categories of information contained in the register of births maintained under section 13 (1)(a) of the Civil Registration Act 2004 but excluding the Personal Public Service Number of a birth parent;

“birth parent” means, in relation to a person, his or her birth mother or birth father;

“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;

“birth relative information” means, in relation to a person, the following information-

- (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;

“care information” means, in relation to a relevant person-

- (a) the name of any person who cared for a relevant person as part of a nursed out arrangement,
- (b) the name of any person who cared for a relevant person as part of a boarded out arrangement,
- (c) the name of any person who cared for a relevant person as part of a foster care arrangement,
- (d) the name of a person in charge and the name of any person who cared for a relevant person while he or she was resident as a child in an institution listed in schedule 1,
- (e) the location at which any care arrangement referred to in (a) - (d) took place,
- (f) the duration and dates of any care arrangement referred to in (a) - (d),
- (g) the name of any person who made arrangements for the adoption of a relevant person, whether or not an adoption was effected in respect of him or her,
- (h) the name of any person who made arrangements for a foster care arrangement or who placed the relevant person with prospective adopters,
- (i) the name of any person who made arrangements for the relevant person to be nursed out or boarded out,

and excludes care provided by-

- (a) a birth parent or guardian of the child, or
- (b) a relative of the child who is providing care other than as part of a nursed out, boarded out or foster care arrangement, or
- (c) a person who is, or becomes, the adoptive parent of the child;

“Consent” for the purposes of this Bill shall be construed in accordance with the Data Protection Regulation;

“Contact Preference Register” means the register established under Part 5 of this Act;

“Data Protection Regulation” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016;

“early life information” means in relation to a person, information that relates to him or her in the period following his or her birth and includes—

- (a) the location at which he or she resided and the dates during which he or she resided at 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) the person’s birth weight,
- (d) information on the person’s health, physical or emotional development,

- (e) information on any medical treatments, procedures or vaccinations provided to the person,
- (f) the duration for which the person's birth mother remained with him or her in the same place of residence and the start and end dates of that duration,
- (g) information on whether the person left with his or her birth mother or separately to his or her birth mother,
- (h) information on whether a birth parent or birth relative visited or inquired in relation to the person, including the degree of relationship to the relevant person but excluding the name of the birth parent or birth relative, and
- (i) birth relative information;

“incorrect birth registration” in relation to a person, means an entry in the Register of Births in which-

- a) the particulars of the person's birth are falsely and incorrectly recorded in the said entry, and
- b) the persons named as mother, and if applicable father, in the said entry assumed the role of parents in relation to the person and treated that person as their lawful child;

“medical information” means, in relation to a person, information relating to his or her medical history, or the medical history of his or her birth parent, or a birth relative, insofar as it is relevant to a person;

“Minister” means the Minister for Children, Equality, Disability, Integration and Youth;

“National Adoption Contact Preference Register” means the register established by the Authority in 2005;

“primary information source” means –

- (a) the Agency, or
- (b) the Authority;

“provided items” means letters, photographs, mementoes or other documents or objects held by the Agency or the Authority that have been provided, whether to the Agency, Authority or any other person, by or on behalf of a birth parent or birth relative of a relevant person, or another person involved in the provision of care of a relevant person, for the purpose of their being made available to the relevant person in the event that they were to be sought by or on behalf of him or her, whether the items have been so provided before, on or after the date on which –

- (a) this section comes into operation, or
- (b) the relevant person became a relevant person;

“register of births” means a register of births maintained by An tArd-Chláráitheoir under section 13(1)(a) of the Civil Registration Act 2004, as amended, or under the repealed enactments (within the meaning of that Act);

“relative” means, in relation to a person, a parent, guardian, spouse, civil partner, grandparent, son, daughter, grandchild, brother, sister, cousin, uncle or aunt of the person—

- (a) whether the relationship is of the whole blood or half blood, or by marriage,
- (b) whether or not the relationship depends on the adoption of a person, and
- (c) whether the relationship is traced through the adoptive mother or the adoptive father or, as the case may be, the birth mother or the birth father;

“relevant body” means –

- (a) the Agency,
- (b) the Authority,
- (c) a body which is designated as a relevant body for the purposes of this Act by means of regulations made under Head 34 [Designation of Relevant Bodies by the Minister];

“relevant guardian” means, in relation to an adopted person, the person who, at the time of the adoption of the adopted person, was his or her guardian and—

- (a) consented, in accordance with section 26 of the Act of 2010, to the making of an adoption order in respect of the adopted person, or
- (b) otherwise, and in accordance with the law in force in the State at the time of the adoption, consented to the adoption;

“relevant person” means—

- (a) an adopted person,
- (b) a person who is or has been the subject of an incorrect birth registration, or
- (c) a person who has been nursed out or boarded out or the subject of pre-adoptive foster care, or
- (d) a person who has reasonable grounds for suspecting that he or she may have been the subject of an incorrect birth registration, or
- (e) a person who has reasonable grounds for suspecting that he or she may have been nursed out or boarded out or the subject of pre-adoptive foster care, or
- (f) a person who resided as a child in an institution listed in schedule 1 (to the extent that such a person does not fall within paragraphs (a) to (e) above).

“relevant record” means —

- (a) Records in relation to relevant persons that contain birth information, early life

- information, care information or medical information;
- (b) Communications in relation to a relevant person from a birth parent or birth relative which are held by the Agency, the Authority or a Primary or Secondary Information Source;
- (c) Communications in relation to a birth parent or birth relative from a relevant person which are held by the Agency, the Authority or an Information Source;
- (d) Records currently held by the Department of Foreign Affairs in relation to adopted children moving overseas in the period 1940 – 1979;
- (e) Any information recorded on the Contact Preference Register; and
- (f) Records provided to or created by the Authority or the Agency in the course of providing a tracing service.

“secondary information source” means-

- (a) the Department of Children, Equality, Disability, Integration and Youth,
- (b) the Department of Education,
- (c) the Department of Foreign Affairs and Trade,
- (d) the Department of Health,
- (e) the data controller of the AIRR archive,
- (f) the Health Service Executive,
- (g) a registered adoption society, and
- (h) a person prescribed under Head 22 [Minister may prescribe person to be secondary information source] to be a secondary information source;

### **Explanatory Notes:**

This Head defines the key terms used in the draft Heads of Bill.

A number of the definitions are particularly noteworthy as follows:

A “relevant person” is defined as encompassing all persons who were adopted, nursed out, boarded out, the subject of an incorrect birth registration, or who spent time as a child in a Mother and Baby Home or County Home, as well as other categories of person who may have questions in relation to their origins. Relevant persons can apply for information from “relevant bodies”, namely the Adoption Authority of Ireland (AAI), Tusla or any other body prescribed by regulation by the Minister. The categories of information for which they can apply are: birth information, care information, early life information, medical information and provided items. Each of these terms is defined.

“Birth information” encompasses those categories of information contained in the register of births maintained by the GRO, with the exception of the PPSN. The definition encapsulates this information where it is contained on files held by a relevant body and not just where it is

contained on the birth certificate. This is very important in the case of people for whom no adoption certificate may exist, such as those who may have been the subject of an illegal birth registration or those who may have been boarded out and lived under the boarded out family name without knowledge of their original birth name.

“Care information” includes information on the names of persons who cared for the relevant person as an infant or child in a Mother and Baby Home or County Home, or under a nursed out, boarded out or pre-adoptive care arrangement, as well as the duration and location of such care arrangements and the names of the persons who were involved in making such arrangements.

“Early life information” is information relating to the relevant person’s early life (eg. place of residence, baptism, personal development) and includes non-identifying information on whether the person has older or younger siblings.

“Medical information” is defined to include the person’s own medical history and the medical information of a birth parent or relative insofar as it is relevant to a person

Finally, in relation to safeguarding of records, notable definitions are “primary information source” which comprises AAI and Tusla, and “secondary information source” which comprises a list of bodies who hold relevant records and who are mandated under Part 6 to safeguard those records.

**PART 2**  
**ACCESS TO BIRTH CERTIFICATES**

**Head 3 - Relevant person may apply for copy of birth certificate**

*Provide along the following lines:*

- 1) Subject to the provisions of this Part, a relevant person, who has attained the age of 16, shall have a right of access to his or her birth certificate.
- 2) On the commencement of this section there shall be a period of three months during which, without prejudice to the right of a birth parent to apply to register a contact preference on the Contact Preference Register established under Head 16 [Contact Preference Register], a birth parent shall be entitled to specify in writing to the Authority his or her preference in relation to contact with a relevant person who is a child of the birth parent prior to any application under this Head being considered by the General Register Office or a relevant body.
- 3) The Authority shall register all preferences received by means of an application under Head 16 [Contact Preference Register] on the Contact Preference Register.
- 4) The Authority shall carry out a public information campaign during the time period referenced in subsection (2) for the purposes of giving notice to the public of the process for registering contact preferences and the process for accessing birth certificates set out in this Part.
- 5) Subject to the cessation of the time period referenced in subsection (2) and subject to subsections (8)- (12), an tArd-Chláraitheoir shall, on application by a relevant person to him or her in that behalf in writing and on payment to him or her of the prescribed fee —
  - a) search the register of births and the index thereto, together with the Adopted Children Register and the index provided for under Section 86(1) of the Act of 2010, and
  - b) give the relevant person —
    - i) a copy, certified by him or her to be a true copy,
    - ii) a copy,
    - iii) a certified extract,of an entry pertaining to the birth of the relevant person in the register of births.

- 6) Section 86(2) of the Act of 2010 is amended by substituting “any person (except for a relevant person as defined in the Birth Information and Tracing Act 2021)” for “any person”.
- 7) Where a relevant body holds a birth certificate in respect of a relevant person, the relevant body shall, subject to the cessation of the time period referenced in subsection (2) and subject to subsections (8) – (15), on application to it by a relevant person in writing, give the relevant person a copy of the birth certificate.
- 8) On receipt of an application from a relevant person in respect of his or her birth certificate, the General Register Office or any relevant body who holds the birth certificate shall request from the Authority information on any contact preference registered on the Contact Preference Register in respect of a birth parent who is listed on the birth certificate.
- 9) On receipt of a request under subsection (8), the Authority shall inform the General Register Office or relevant body, as the case may be, as to whether the birth parent –
  - a) has not entered a preference on the Register;
  - b) is seeking to have contact with the specified person,
  - c) is willing to be contacted by the specified person,
  - d) is not willing to be contacted by the specified person and an information session has already taken place, or
  - e) is not willing to be contact by the specified person and no information session has taken place.
- 10) Information provided to the General Register Office or a relevant body by the Authority under subsection (9) (a), (b) or (c) shall be conveyed to an applicant by the General Register Office or the relevant body, as the case may be, when providing the birth certificate to the applicant.
- 11) Where subsection (9)(e) applies, the General Register Office or relevant body, as the case may be, shall provide the Authority with contact details for the relevant person and shall notify the relevant person accordingly.
- 12) Where subsection (9)(e) applies, the General Register Office or relevant body, as the case may be, shall not provide the birth certificate to the applicant until the notification referred to in subsection (14) has been received.
- 13) Following receipt of contact details under subsection (11), the Authority shall arrange for contact to be made with the relevant person and for the no contact preference to be conveyed as part of an Information Session to be held between the relevant person and a social worker employed by the Agency or the Authority, the purpose of which is to inform the applicant of:

- a) the birth parent's contact preference,
  - b) the birth parent's privacy rights, and
  - c) the importance of respecting their contact preferences.
- 14) The completion of the information session referred to in subsection (13) shall be confirmed in writing and notified to:
- a) the General Register Office or relevant body who shall then provide the applicant with a copy of the birth certificate, and
  - b) the Authority who shall record this information on the Contact Preference Register.
- 15) Where information provided by the Authority under subsection (9) denotes that the information session referred to in subsection (13) has taken place, the General Register Office or relevant body shall proceed to provide a copy of the birth certificate without a requirement for a further information session.

**Explanatory Notes:**

The policy intent of this Head is to provide for the release of birth certificates in all cases where a relevant person who is 16 years or older applies for his or her birth certificate. As such, the section recognises the importance of relevant persons knowing their origins. The relevant person shall be entitled to proceed with the application for release of the birth certificate regardless of the expressed preference of the birth parent as to contact, and the birth certificate shall be released in all cases.

Subsection (2) provides that, on the enactment of the proposed legislation, there will be a three month window where birth parents will be entitled to specify their preference in respect of contact through an application to the Contact Preference Register maintained by the Adoption Authority of Ireland (AAI). The AAI will register such preferences on the Contact Preference Register. (Preferences and contact details which are captured on the contact register could be updated at any time but without prejudice to the validity of information communicated prior to updates being made. People can also come forward at any point after the three month window and make an application for entry on the Contact Preference Register.)

Subsection (4) provides that, during the three month window, a major public information campaign will be conducted, with a national and international reach, for the purposes of giving notice to the public of the changes being introduced by the legislation and the time bound process for registering contact preferences.

Following closure of the three month window, a relevant person will be able to apply under the proposed legislation for their birth certificate.

On receipt of an application, the GRO or any relevant body who holds the birth certificate would request from the AAI information regarding any preferences which may have been registered on the Contact Preference Register by a birth parent who is listed on the birth certificate held by the relevant body or on the birth register maintained by the GRO.

The General Register Office maintains the Register of Births and a birth certificate is generated from entries in that Register. As such it differs from relevant bodies who may hold a copy of a birth certificate generated by the GRO on a previous date.

In cases where there is a 'nil response' or 'yes to contact' recorded on the Contact Preference Register, the AAI will convey this to the GRO or relevant body who shall communicate this to the relevant person and provide the relevant person with a copy of the birth certificate.

If a 'no contact' preference has been registered, the AAI will arrange contact with the relevant person to ensure that the 'no contact' preference is conveyed as part of an information session with a Tusla or AAI social worker prior to the release of the birth certificate.

The fact of this information session having occurred must be recorded by the social worker. At this meeting the applicant will be informed of the other party's contact preference and privacy rights, and the importance of respecting their contact preference. Once the information session has been completed, the GRO or the relevant body will be informed and will be able to immediately release the birth certificate.

Subsection (15) provides that, where a person applies for his or her birth certificate and the Contact Preference Register records that an information session has already taken place, then the birth certificate can be released without the requirement for a further information session. This could arise in cases where a relevant person firstly has to apply to Tusla for birth information in order to be able to apply to the GRO for their birth certificate. It could also arise in a situation where a relevant person has applied to multiple relevant bodies, each of whom holds birth information or a copy of the birth certificate.

#### **Head 4- Counselling Support for Birth Parents**

*Provide along the lines of the following:*

- (1) A birth parent who has expressed a preference for no contact shall be informed by the Authority of their right to access counselling support provided by or on behalf of the Agency.
- (2) The Agency, on receipt of a request from a person referred to in section (1), shall arrange for the provision of counselling support for the person.
- (3) For the purposes of this section, the Authority may share with the Agency, relevant information on the person referred to in subsection (1), which may include the person's name and contact details.

#### **Explanatory Notes:**

This Head provides that, where a birth parent has registered a preference for no contact, they will be informed by the AAI of their entitlement to avail of counselling support provided through Tusla. Where the birth parent requests this counselling support from Tusla, the latter shall arrange for it to be provided.

**PART 3**  
**ACCESS TO INFORMATION AND RECORDS**

**Head 5 - Right to be Provided with Information and Items**

*Provide along the following lines:*

Subject to the provisions of this Part, a relevant person, who has attained the age of 16, shall have a right of access to the following:

- (a) birth information;
- (b) early life information;
- (c) care information;
- (d) medical information;
- (e) provided items.

**Explanatory Notes:**

This Head provides a right of access for relevant persons who are aged 16 years or older to the categories of information and items set out at (a) – (e) in the draft Head. The process for applying and accessing each category is set out in the subsequent Heads within this Part.

## **Head 6 - Relevant person may apply for items and information**

*Provide along the following lines:*

A person who has attained the age of 16 years and who is, or who reasonably believes himself or herself to be, a relevant person may apply in writing to a relevant body for the provision by the relevant body to him or her of any or all of the following that is or are held by the relevant body and that relates or relate to him or her:

- (a) birth information;
- (b) early life information;
- (c) care information;
- (d) medical information;
- (e) provided items.

### **Explanatory Notes:**

This Head provides for a relevant person, or a person who reasonably believes themselves to be a relevant person, to make an application to a relevant body for the provision of information and items falling into any of the categories set out at (a) - (e) in the draft Head, which relates to the relevant person.

## **Head 7 – Relevant Body to provide birth information**

*Provide along the following lines:*

- (1) Subject to the provisions of this part, where an application is made in accordance with Head 6 [Relevant person may apply for items and information], a relevant body shall provide the applicant with a copy of the birth information requested.
- (2) On the commencement of this section there shall be a period of three months during which, without prejudice to the right of a birth parent to apply to register a contact preference on the Contact Preference Register established under Head 16 [Contact Preference Register], a birth parent shall be entitled to specify in writing to the Authority his or her preference in relation to contact with a relevant person who is a child of the birth parent prior to any application under this Head being considered by a relevant body.
- (3) The Authority shall register all preferences received by means of an application under Head 16 [Contact Preference Register] on the Contact Preference Register.
- (4) The Authority shall carry out a public information campaign during the time period referenced in subsection (2) for the purposes of giving notice to the public of the process for registering contact preferences and the process for accessing birth information set out in this Part.
- (5) Subject to the cessation of the time period referenced in subsection (2) and subject to subsections (6)- (10), where a relevant body holds birth information in respect of a relevant person, the relevant body shall, on application to it by a relevant person in writing, give the relevant person a copy of the birth information.
- (6) On receipt of an application from a relevant person in respect of his or her birth information, a relevant body who holds birth information shall request from the Authority information on any contact preference registered on the Contact Preference Register in respect of a birth parent who is listed on the records containing the birth information.
- (7) On receipt of a request under subsection (6), the Authority shall inform the relevant body as to whether the birth parent –
  - (a) has not entered a preference on the Register;
  - (b) is seeking to have contact with the specified person,
  - (c) is willing to be contacted by the specified person,
  - (d) is not willing to be contacted by the specified person and an information session has already taken place, or
  - (e) is not willing to be contact by the specified person and no information session has taken place.

- (8) Information provided to a relevant body by the Authority under subsection (7) (a), (b) or (c) shall be conveyed to an applicant by the relevant body when providing the birth information to the applicant.
- (9) Where subsection (7)(e) applies, the relevant body shall provide the Authority with contact details for the relevant person and shall notify the relevant person accordingly.
- (10) Where subsection (7)(e) applies, the relevant body shall not provide the birth information to the applicant until the notification referred to in subsection (12) has been received.
- (11) Following receipt of contact details under subsection (9), the Authority shall arrange for contact to be made with the relevant person and for the no contact preference to be conveyed as part of an Information Session to be held between the relevant person and a social worker employed by the Agency or the Authority, the purpose of which is to inform the applicant of:
  - (a) the birth parent's contact preference,
  - (b) the birth parent's privacy rights, and
  - (c) the importance of respecting their contact preferences.
- (12) The completion of the information session referred to in subsection (11) shall be confirmed in writing and notified to:
  - (a) the relevant body who shall then provide the applicant with a copy of the birth information, and
  - (b) the Authority who shall record this information on the Contact Preference Register.
- (13) Where information provided by the Authority under subsection (7) denotes that the information session referred to in subsection (11) has taken place, the relevant body shall proceed to provide a copy of the birth information without a requirement for a further information session.
- (14) To the extent that it is practicable to do so, the relevant body shall provide the applicant with a copy of the records containing the birth information requested.

**Explanatory Notes:**

The policy intent of this Head is to provide for the release of birth information in all cases where a relevant person who is 16 years or older applies for his or her birth information.

The release of birth information contained on files held by a statutory body is fundamentally important in the case of people for whom no adoption certificate may exist, such as those who may have been the subject of an illegal birth registration or those who may have been boarded out and lived under the boarded out family name without knowledge of their original birth name. In the absence of access to this information, individuals are unable to determine their origins and may also be impacted in terms of their Constitutional right to an accurate birth registration and their succession rights.

The Head provides that birth information will be provided in accordance with the process set out in Part 2, namely a relevant body must obtain from the AAI any information regarding preferences which has been registered on the Contact Preference Register by a birth parent who is listed on the birth information held by the relevant body. Where a birth parent has not made any entry or has indicated a preference for contact, the relevant body will communicate this when providing the birth information.

If a 'no contact' preference has been registered, this information shall be conveyed as part of an information session to be held between the relevant person and a Tusla or AAI social worker. The information session shall be held prior to the release of information by the relevant body. The fact of this meeting having occurred must be recorded by the Tusla social worker. At this meeting the applicant will be informed of the other party's contact preference and privacy rights, and the importance of respecting their contact preference.

Subsection (13) provides that, where a person applies for birth information and the Contact Preference Register records that an information session has already taken place, then the birth information can be released without the requirement for a further information session. This could arise in cases where a relevant person has applied to multiple relevant bodies, each of whom holds birth information on the relevant person.

Finally, Head 4 [Counselling Support for Birth Parents] above provides that a birth parent who has expressed a no contact preference shall be informed by the AAI of their right to access counselling support provided by Tusla.

## **Head 8 – Relevant Body to provide early life information**

*Provide along the following lines:*

- (1) Where an application is made in accordance with Head 6 [Relevant person may apply for items and information] a relevant body shall provide the applicant with a copy of the early life information requested.
- (2) To the extent that it is practicable to do so, the relevant body shall provide the applicant with a copy of the records containing the early life information requested.

### **Explanatory Notes:**

This Head provides for the release of early life information to a relevant person who applies to a relevant body for same.

Early life information will be particularly important for those who were adopted at an older age from an institution or agency or who may have lived much of their childhood in a mother and baby home or spent their infancy and early years in a series of nursed out or institutional placements. In such cases, the person may have no knowledge of where they spent the first years of their life and who had care of them during that period.

## **Head 9 - Relevant Body to provide care information**

*Provide along the following lines:*

- (1) Where an application is made in accordance with Head 6 [Relevant person may apply for items and information] a relevant body shall provide the applicant with a copy of the care information requested.
- (2) To the extent that it is practicable to do so, the relevant body shall provide the applicant with a copy of the records containing the care information requested.

### **Explanatory Notes:**

This Head provides for the release of care information to a relevant person who applies to a relevant body for same.

This category of information relates to information on children in Mother and Baby Homes, boarded out children or others who spent time in care paid for by the State, some of whom have fundamental questions in relation to where they spent their infancy and early years and the people who were responsible for their care. These records will contain third party data related to people who provided care to the applicant on behalf of, or paid for by, the State. It could also include those who made arrangements for the provision of such care.

## **Head 10- Relevant Body to provide medical information**

*Provide along the following lines:*

- (1) Subject to subsections (2) and (3), where an application is made in accordance with Head 6 [Relevant person may apply for items and information], a relevant body shall provide the applicant with a copy of medical information.
- (2) Where, in the case of an application under Head 6 [Relevant person may apply for items and information], a relevant body believes that medical information in relation to a birth parent or a birth relative of the applicant is relevant to the medical history or health of the applicant, and that it is necessary for reasons of substantial public interest that the applicant be provided with such information, the relevant body may provide the applicant with such medical information as may be necessary for this purpose through the applicant's nominated medical practitioner.
- (3) When providing a medical practitioner with medical information in accordance with this section, the relevant body will not provide the name or (unless it is necessary to do so for medical reasons) the specific blood relationship of the birth parent or birth relative to whom the information relates.
- (4) The Authority may issue guidelines in respect of the type of medical information that relates to a birth parent or birth relative and that is, or is likely to be, of relevance to the maintenance or management of the health of a relevant person, the release of which is necessary for reasons of substantial public interest.
- (5) In preparing guidelines the Authority may consult with such persons, including persons with expertise in the area of hereditary medical conditions, as it considers appropriate.

### **Explanatory Notes:**

This Head provides for the release of medical information to a relevant person who applies to a relevant body for same.

Where the information relates to a birth parent or relative, it will only be released where the relevant body determines that it is relevant to the medical history or health of the applicant and that it is necessary for reasons of substantial public interest. In such circumstances, the information will be released to the person's nominated medical practitioner and shall not identify the birth parent or relative but only the fact of the medical condition/ health issue being something which arises in the applicant's birth family. The release of information may also be underpinned by guidelines which set out the type of information which is of relevance to the relevant person and the release of which is necessary for reasons of substantial public interest.

The legal basis for the release of the information is as follows:

- Article 6 (1)(e) (processing is necessary for the performance of a task carried out in the public interest); and
- Article 9(2)(g) (processing is necessary for reasons of substantial public interest).

Insofar as Article 23 is concerned, this would be covered by 23(1)(i) (rights of data subjects/others). Insofar as 23(2) is concerned, the categories of data, purposes of processing, scope of restrictions and specification of controller may be regarded as defined or implicit in the provision itself. In particular, the issue of appropriate safeguards within the meaning of Article 23(2)(d) is addressed in the requirement for the information to be provided to a nominated medical practitioner, provided in a non-identifying manner and in accordance with any guidelines prepared by the AAI in consultation with medical experts.

## **Head 11 – Provided Items**

*Provide along the following lines:*

Where an application is made in accordance with Head 7 [Relevant Body to provide birth information], the Agency or the Authority shall provide the applicant with provided items which have been deposited with them for the purpose of being made available to the applicant.

### **Explanatory Notes:**

This Head provides for the release of provided items to a relevant person who applies to a relevant body for same.

**PART 4**  
**TRACING**

**Head 12 - Agency and Authority to provide a tracing service**

*Provide along the following lines:*

- (1) The Agency and the Authority may provide a tracing service.
- (2) This service may be provided where an application is received by a relevant person or the birth relative of a relevant person or the relative of a relevant person who is seeking to locate a person for the purpose of:
  - (i) facilitating contact;
  - (ii) in the case of a relevant person, requesting further information in relation to the relevant person's birth, early life, care or any other matter, medical information or any contemporaneous information;
  - (iii) in the case of a relative or birth relative of a relevant person, requesting further information in relation to the relevant person or providing information relevant to that person.
- (3) An application under subsection (2) shall be made in such manner, and accompanied by such information, as the Agency or the Authority, as appropriate, may specify.
- (4) The Agency and the Authority shall have the power to conduct a trace, on the direction in writing of the Minister, where the Minister deems it necessary and in the public interest, in relation to specific individuals or cohorts of individuals.
- (5) The Authority shall be entitled to process data from the Contact Preference Register established under Part 5 for the purposes of tracing, including sharing data from the Contact Preference Register with the Agency in cases where the Agency is conducting the trace.
- (6) A person who makes an application under this Part shall be advised of the right to make an application to be entered in the Contact Preference Register established under Part 5.

**Explanatory Notes:**

The policy intent of this Head is to provide for a robust statutory framework to allow Tusla and the AAI to deliver a tracing service. Traces will be carried out to locate individuals for the purposes of contact and for the requesting and providing of information.

While the service will operate primarily on the basis of an application from an individual, subsection (4) above is intended to provide that a trace can be carried out by Tusla or the AAI in specific circumstances, other than on application by an individual. This power is required, for example, in the case of any future illegal birth registration cases as the individuals concerned may not know that they are the subject of such a registration and, therefore, cannot invoke their right to make an application. It is considered that this provision is required in circumstances where a body of the State becomes aware of a potential illegal birth registration in respect of specific individuals, or cohorts of individuals, for example, as arose in the context of the evidence of illegal birth registrations on the files of St. Patrick's Guild. This power could only be invoked where the Minister had so directed in writing, having deemed it necessary and in the public interest.

Subsection (5) provides a statutory basis to allow the AAI to fully process all of the information contained on the Contact Preference Register established under Part 5 for the purposes of tracing. This subsection also allows the AAI to share information with Tusla, where the trace in question is being carried out by Tusla.

Subsection (6) requires that, where an individual applies under this Part of the Act for a tracing service, they will be informed of their right to apply for an entry on the Register.

### **Head 13 - Agency and Authority may request information**

*Provide along the following lines:*

- (1) Subject to subsection (2), the Agency or the Authority may request a person to provide it with, or with access to, information that is in the possession of, or under the control of, the person.
- (2) A request under subsection (1) may be made only where the Agency or the Authority reasonably requires the information concerned for the purposes of enabling it to perform the functions referred to in Head 12 [Agency and Authority to provide a tracing service].
- (3) Notwithstanding any enactment or rule of law, a person who receives a request made under subsection (1) shall comply with the request.
- (4) The Agency or the Authority shall not, other than as provided for by under this Act, disclose information obtained by it pursuant to a request under subsection (1).

#### **Explanatory Notes:**

The policy intent of this Head is to provide a statutory basis for Tusla and the AAI to request information from third parties, to assist in providing a tracing service. At present, the GDPR and data protection legislation prevent third parties from sharing information with Tusla and the AAI. The third parties in question will include Government Departments, the HSE, and Church authorities. The information provided by these bodies can be invaluable in identifying the current location of an individual whom Tusla or the AAI is seeking to trace, for the purposes outlined in the previous Head.

This provision must be sufficiently strong and specific to put beyond doubt that third parties, including Government Departments, state agencies, Church bodies and religious congregations, have a lawful basis for sharing information which is fully in compliance with meeting their GDPR obligations. It should be noted in this regard, that in order to correctly identify and locate the data of a relevant person, the body may be required to process the data of non relevant persons.

The provision requires the third party to comply with any reasonable request.

This Head also restricts Tusla and the AAI from disclosing any information received from a third party, other than as provided for under this legislation.

#### **Head 14 - Guidelines (Part 4)**

*Provide along the following lines:*

1. The Minister may issue guidelines for the purpose of providing practical guidance to the Agency or the Authority in respect of the performance by either body of its functions under this Part.
2. Guidelines under this section may include the procedures to be followed for the purpose of locating a person under Head 12 [Agency and Authority to provide a tracing service].

#### **Explanatory Notes:**

The policy intent of this Head is to give the Minister a discretionary power to issue guidelines in relation to the carrying out of the tracing function by Tusla and the AAI. The guidelines could be used, as necessary, to provide greater guidance and detail on the procedures to be deployed, and could be used to reflect emerging best practice. The guidelines may be of specific assistance in relation to identifying procedures to locate individuals, and to engaging with third parties for the purposes of establishing the identity and current location of individuals who are the subject of a trace.

## **Head 15 - Agency or the Authority to facilitate contact between parties or to share information between parties**

*Provide along the following lines:*

- (1) Where a person (“requester”) has made an application to the Agency or the Authority in respect of him or her and a person (“specified person”) in accordance with Head 12 [Agency and Authority to provide a tracing service], the Agency or the Authority, on receipt of such a request, shall, without undue delay, take all reasonable steps in accordance with any guidelines under Head 14 [Guidelines] to locate the specified person concerned.
- (2) Where the Agency or the Authority locates the specified person, it shall take all reasonable steps to ascertain from him or her, insofar as is practicable, and as appropriate to the application:
  - a. Whether or not he or she is willing to have contact with the requester;
  - b. Whether or not he or she is willing to provide the requested information; or
  - c. Whether or not he or she is willing to accept the provided information.
- (3) Where the specified person informs the Agency or the Authority that he or she is not willing to have contact with the requester, or provide requested information, or accept provided information, the Agency or the Authority shall inform the requester of that fact.
- (4) Where a specified person informs the Agency or the Authority that he or she is willing to have contact with the requester, the Agency or the Authority shall take such action as it considers appropriate to facilitate such contact.
- (5) Where a specified person informs the Agency or the Authority that he or she is willing to provide the requested information, or accept the provided information, the Agency or the Authority shall take such action as it considers appropriate to facilitate such transfer of information.

### **Explanatory Notes**

This Head is intended to set out the actions by Tusla or the AAI that must follow an application under Head 12 [Agency and Authority to provide a tracing service]. The application for tracing can be for any of the following three purposes:

- To seek contact;
- To seek information from another individual;
- To seek to give information to another individual.

Essentially, the body receiving the application must attempt to locate the person concerned, and establish whether or not they wish to have contact, give, or accept, information, as set out in the application.

The applicant is then informed of the outcome of the trace, and the wishes of the person being traced. Where contact has been sought, and the person traced consents to same, the Head then places an obligation on the body concerned to facilitate the contact in question. Where information has been sought or provided, and the other party agrees, the Head then places an obligation on the body concerned to facilitate the exchange of information in question.

**PART 5**  
**CONTACT PREFERENCE REGISTER**

**Head 16 - Contact Preference Register**

*Provide along the following lines:*

- (1) The Authority shall establish and maintain a register to be known as the Contact Preference Register, and referred to in this Part as the “register”.
- (2) The purpose of the register shall be to—
  - (a) record the name and contact details of persons to whom subsection (3) applies,
  - (b) record the statements made, or deemed to have been made, under subsection (9) by persons referred to in paragraph (a),
  - (c) record such further information as the Authority or the Minister considers appropriate,
  - (d) provide a mechanism for individuals to lodge medical information or provided items (which may include sealed information in relation to themselves or their family) which they wish to be shared with a person to whom subsection (3) applies,
  - (e) facilitate the Authority and relevant bodies in the performance by them of their functions under this Act.
- (3) The following persons may apply, in accordance with this section, to have an entry made in the register in respect of him or her:
  - (a) a person who is, or who believes himself or herself to be, a relevant person;
  - (b) a person who is, or who believes himself or herself to be, a birth parent of a relevant person;
  - (c) a person who was a relevant guardian in relation to an adopted person;
  - (d) the adoptive parent of an adopted child;
  - (e) a birth relative of a relevant person;
  - (f) a person who was a carer in relation to a relevant person as construed in accordance with the definition of “care information”.
- (4) (a) An application under subsection (3) shall be made in such manner, and accompanied by such information, as the Authority, having regard to the matters referred to in subsection (2), may specify.

(b) Prior to the making of an entry in the Register, the person to whom subsection (3) applies shall be informed of the following:

- (i) The purpose for which information contained in the entry is to be used and processed;
- (ii) The legal basis on which the information contained in the entry is processed;
- (iii) The circumstances in which the information contained in the entry may be released to a third party;
- (iv) The entitlement to amend the information contained in the entry; and
- (v) The entitlement to have the entry deleted from the Register;

(c) An entry shall not be made in the Register unless the person to whom subsection (3) applies has provided his or her consent to the entry, in a manner to be determined by the Authority.

(d) The Minister may, at any time, issue guidelines in writing to the Authority in relation to the making of entries in the Register, and the Agency shall comply with such guidelines.

(5) An entry in the register in respect of a person shall contain the following information:

- (a) his or her forename and surname (including any forename or surname previously used by him or her);
- (b) his or her date of birth, if known to him or her;
- (c) his or her address and such other contact details as the Authority may specify;
- (d) the paragraph of subsection (3) that applies to him or her;
- (e) any statement made by him or her under subsection (9);
- (f) an index reference in respect of any medical information or provided item lodged by the person;
- (g) such details relating to a person specified by him or her in his or her statement under subsection (9) as he or she may provide;
- (h) whether a specified person has attended an information session under Head 3 [Relevant person may apply for copy of birth certificate] or Head 7 [Relevant body to provide birth information] related to the person's preference for no contact.

(6) The person, in respect of whom there is an entry in the register may, in such manner as may be specified by the Authority, request the Authority to—

- (a) cancel the entry, or

- (b) amend or delete any information, including a statement under subsection (9) contained in the entry.
- (7) The Authority shall comply with a request made in accordance with subsection (6).
- (8) The information contained in an entry in the register in respect of a person shall, for the purposes of this Act, be deemed to be accurate until such time as the Authority may receive a request in accordance with subsection (6) in relation to the information.
- (9) A person, in a statement under this subsection, may state, in relation to such person (“specified person”) as he or she may specify in the statement, whether he or she is—
- (i) seeking to have contact with the specified person,
  - (ii) willing to be contacted by the specified person, or
  - (iii) not willing to be contacted by the specified person,
  - (iv) seeking information in relation to the specified person and, if so, the nature of the information,
  - (iv) willing to provide information if requested by a specified person.
- (10) A person may provide the Authority with a statement under subsection (9)—
- (a) when applying under subsection (3), or
  - (b) where there is an entry in the register in respect of him or her.
- (11) Following consultation with the Authority, the Minister may make regulations—
- (a) prescribing the types of further information referred to at subsection (1)(c) above,
  - (b) prescribing such further matters as are necessary for the effective operation of the Contact Preference Register.

### **Explanatory Notes:**

The policy intent of this Head is to provide a statutory basis for the Contact Preference Register. This Register, which is to be established and maintained by the Authority, will allow persons to apply for an entry in the Register in respect of their contact and information preferences. Preferences and contact details which are captured on the contact register could be updated at any time but without prejudice to the validity of information communicated prior to updates being made.

The Head defines the categories of persons who can apply to be entered on the register, and sets out how the application is made, and what information must be shared with the individual in respect of the processing of the data on the Register. This is necessary, in order to comply with GDPR requirements. The Head also addresses the issue of the consents necessary to place

the information on the Register and, thereafter, to process that information, in accordance with the Act. “Consent” must reach the necessary GDPR/Data Protection standards.

It is intended that an application to this register can run wholly independently of an application to trace. This approach allows flexibility in terms of differentiating between people who want an immediate and proactive trace versus those who simply want to lodge a preference or information. It also recognises that some people may want to avail of a tracing service without having to give consent to their details being entered in the register. However, it is proposed that, on availing of one service, a person would be advised of the other. In this way, the individual will be supported and empowered to avail of any and all services which best meet their needs.

It should be noted that a significant minority of birth mothers gave more than one child up for adoption, and may have different preferences in relation to each child. The provision will allow for a person to make a separate statement in respect of specific individuals, or cohorts of individuals.

## Head 17 - Lodging of medical information and provided items on the Register

*Provide along the following lines:*

- (1) A person may lodge medical information or provided items which they wish to be shared with a specified person-
  - (a) when applying under subsection (3), or
  - (b) where there is an entry in the register in respect of him or her.
- (2) Provided items, for the purposes of this Part, may contain sealed information or communications from the person for a specified person.
- (3) A lodgement of medical information or provided items shall be done in such manner, and accompanied by such information, as the Authority may specify.
- (4) Prior to the making of an entry in the Register, the person to whom subsection (1) applies shall be informed of the following:
  - (a) The purpose for which the medical information or provided items are to be used and processed;
  - (b) The legal basis on which the medical information or provided items are to be used and processed;
  - (c) The circumstances in which the medical information or provided items may be released to a third party;
  - (d) The entitlement to amend the medical information or provided items; and
  - (e) The entitlement to have the medical information or provided items deleted or returned, as appropriate;
- (5) A lodgement shall not be made under subsection (1) unless the person to whom subsection (1) applies has provided his or her consent to the entry, in a manner to be determined by the Authority.
- (6) The Authority, on receipt of the items specified in subsection (1), shall identify the relevant entry on the Register, if one already exists, and if not, make an entry in the Register in respect of the applicant concerned, in compliance with subsection (5) of Head 16 [Contact Preference Register].
- (7) The Authority shall link, by way of a reference number, the items specified in subsection (1) with the relevant entry on the register and shall safeguard the lodged medical information or provided items.

## **Explanatory Notes**

The purpose of this Head is to allow persons to lodge medical information, and provided items to the AAI, which they wish to be shared with a specified individual.

In order to protect the privacy of third parties who may be named or identifiable from information lodged by a person, the Head provides that such communication shall be lodged in a sealed manner, and shall be deemed a provided item.

The Head also provides that where an entry does not already exist in the Register in respect of the individual lodging the material, one shall be made, which complies with the requirements of subsection (5) of Head 16 [Contact Preference Register].

The AAI will create a reference number on the register, which will link to the material lodged, and will be obliged to safeguard the material.

## **Head 18 - Authority to communicate matches on Register and share medical information and provided items**

*Provide along the following lines:*

- (1) The Authority, on receipt of an application for entry on the Register, shall check the register for any existing entry on the Register in respect of which the applicant is a specified person, and shall as appropriate:
  - (a) Inform them that a contact preference has been lodged in respect of them, and inform them of that preference; and provide them with the contact details of the person who has lodged a positive contact preference in respect of them, and offer to facilitate such contact.
  - (b) Inform them that information has been requested in respect of them, and the nature of the information requested;
  - (c) Inform them that medical information has been lodged for sharing with them, and provide them with that information;
  - (d) Inform them that provided items have been lodged for sharing with them, and provide them with those items;
- (2) Where the Authority performs any of the requirements set out in subparagraphs (a) to (d) of section (1) above, the Authority shall so notify the person who is the subject of the existing entry.
- (3) Where the Authority has already identified a link between an existing entry and an applicant, and either of those persons subsequently provides an updated statement, medical information or a provided item, to the register, the Authority shall inform the other person and share preferences, medical information or provided items, as set out in the update, where relevant to the other person.

### **Explanatory notes:**

This Head sets out what happens when an entry is made on the register, and it is a match in respect of an existing entry on the register. This will entail either sharing medical information and provided items with them, communicating a request for information, or informing them of the person's contact preference.

Where the existing entry is a positive contact preference, the applicant will be provided with the contact details of the existing entry. In this instance, the AAI will offer assistance in relation to such contact.

It should be noted that, while the existing entry may be a positive contact preference, that may not be the preference of the second individual.

The Head also provides that, where at any point after a match has been made, further information/preferences are lodged, the Authority will carry out the same steps in relation to any new information/requests/preferences specified in the revised entry.

## **Head 19 - Applicants for entry on Register to be informed of provisions of Parts 2, 3 and 4**

*Provide along the following lines:*

A person who makes an application under this Part shall be advised, where relevant and appropriate, of the right to apply for birth, early life, care information, medical information and provided items in accordance with the provisions of Parts 2 and 3 and of the right to apply for a tracing service in accordance with the provisions of Part 4.

### **Explanatory Notes:**

As it is intended that the Register will be passive, in that it will not trigger a trace, this Head requires that, where someone applies for an entry on the Register, they should be told of the provisions of Parts 2, 3 and 4, which allow them to apply for information and tracing services.

The reference to being informed where relevant and appropriate is necessary for the following reasons:

- Not all persons who are eligible to apply for an entry on the register will be eligible to apply for all other options under the Bill; and
- Where someone states a no contact preference, it would not be appropriate to inform them of their right to apply for a trace and could be upsetting.

## **Head 20 - Transfer of information and preferences from National Adoption Contact Preference Register**

*Provide along the following lines:*

- (1) In this Head:
  - (a) “National Adoption Contact Preference Register” means the non-statutory register of contact preferences established in 2005 maintained by the Authority up to the date of commencement of this Bill;
  - (b) “Contact Preference Register” means the Register of contact preferences established by this Part.
- (2) On the date on which this section comes into operation, the Authority shall make an entry in the register in respect all persons for whom an entry exists in the National Adoption Contact Preference Register and shall transfer all the information in that entry, to the register.
- (3) In respect of such entries, the wish of the individual shall be deemed to be, and shall be recorded in the entry in the register as, a statement made by him or her under subsection (9) of Head 16 [Contact Preference Register], in relation to the relevant person.
- (4) The making of entries and transfer of information provided for in subsections (2) and (3), and the continued processing of the relevant information, shall be for the purposes of:
  - (a) Recognising and giving effect to the preferences expressed by persons who had requested an entry be made in respect of them on the National Adoption Contact Preference Register,
  - (b) Facilitating the operation of this Bill, and
  - (c) Enabling the Authority or the Agency, as appropriate, to comply with their obligations under this Bill.
- (5) The public information campaign referred to at Heads 3(4) and 7(4) shall publicise the fact of the establishment of the Contact Preference Register as well as the fact of the transfer of existing information from the National Adoption Contact Preference Register to the Contact Preference Register.
- (6) Within six months of the later of the commencement date or the establishment of the Contact Preference Register, the Authority shall delete or destroy the National Contact Preference Register.

**Explanatory Notes:**

The intention of this Head is to allow for the transfer of all information and preferences from the existing NACPR to the new register to be established under this Bill. It specifically seeks to provide that any contact preferences in the NACPR shall be deemed to be statements under this Bill.

**PART 6**  
**SAFEGUARDING RELEVANT RECORDS**

**Head 21 - Safeguarding of relevant records to be deemed necessary in the public interest**

*Provide along the following lines:*

- (1) The processing of personal data shall be lawful where the processing is carried out in the implementation of the provisions of this Part and is necessary and proportionate for the purposes of safeguarding of relevant records in the public interest.
- (2) Access to relevant records by employees of the Authority and the Agency should be restricted to where it is required for the performance of their functions under Parts 2, 3, 4 and 5.

**Explanatory notes:**

This Head clarifies that all processing of personal data is pursuant to the principles of data protection.

This Head provides safeguards in terms of data protection by restricting access to relevant record only to employees who need access in order to carry out the functions set out in the other Parts and that any processing shall only be as is necessary and proportionate to carry out the functions.

## **Head 22 - Minister may prescribe person to be secondary information source**

*Provide along the following lines:*

The Minister may, for the purposes of paragraph (h) of the definition in Head 2 [Interpretation] of “secondary information source”, prescribe to be a secondary information source a person who the Minister reasonably believes has in his or her possession relevant records.

### **Explanatory Notes:**

The definition of a secondary information source is set out in Part 1 and includes the power to prescribe a secondary information source. This Head further clarifies that a Minister can prescribe a secondary information source where the Minister reasonably believes that person holds relevant records.

## **Head 23 - Information source to retain and maintain records unless otherwise directed**

*Provide along the following lines:*

- (1) A primary information source shall, insofar as such records are held by it, retain all relevant records held by it and be responsible to maintain those records for the purposes of important objectives of general public interest.
- (2) The Authority shall maintain, in accordance with this section, all relevant records—
  - (a) held by it on the date on which this section comes into operation,
  - (b) transferred to it pursuant to Head 24,
  - (c) transferred to it under Head 25, or
  - (d) retained or obtained by it under Head 26
- (3) A secondary information source shall, insofar as such records are held by it, retain all relevant records held by it and be responsible to maintain those records.
- (4) Nothing in this Part authorises the use or exchange or release of any information transferred to the Authority or retained by the Authority or Agency under this Part other than in accordance with functions set out under Parts 2, 3, 4, 5 or 6.
- (5) Where, at the time this section comes into operation, a person is in possession of relevant records, that person shall, as soon as is practicable, inform the Authority that it is in possession of relevant records and shall maintain them appropriately.

### **Explanatory Notes:**

The overall approach in this Part of the legislation reflects the importance of immediately legislating for access to birth and early life information, while working in the medium-term towards the creation of a centralised archive which may sit within a National Memorial and Records Centre.

The purpose of having primary and secondary information sources is to be clear that the records held by the AAI and by Tusla are to be retained and safeguarded by them and that the records held by Tusla are not to be transferred to the AAI. A secondary information source, who will be a body prescribed in the legislation or by regulation at a later date, is obliged to safeguard records and may also transfer records to the AAI in accordance with this Part.

Primary information sources (the Adoption Authority and Tusla) are given any necessary legal basis to retain all records currently in their possession.

The maintenance of relevant records by primary and secondary information sources is necessary for the purposes of safeguarding important objectives of general public interest and, in particular, the importance of knowing ones origins. This necessity overrides data subjects' right to erasure pertaining to the categories of information for release set out in Part 1 and also any obligations under any other legal provision to destroy records.

Furthermore, any person who holds relevant records should inform the Authority of this fact and ensure that the records are safeguarded.

**Head 24 – Secondary Information source to transfer relevant records where directed by Authority**

*Provide along the following lines:*

- (1) A secondary information source shall, if directed by the Authority, not later than 3 months after such direction is made, furnish to the Authority a statement, in such form as may be specified by the Authority, of the relevant records in its possession.
- (2) Where a secondary information source has furnished a statement in accordance with subsection (1), and subsequent to such furnishing, becomes aware that:
  - (a) a relevant record was in its possession on the date of the statement but was not included in the statement, or
  - (b) comes into possession of a relevant record,it shall, as soon as practicable but in any event not later than 6 weeks after the date on which paragraph (b) applies, furnish to the Authority a statement, in such form as may be specified by the Authority, of the record.
- (3) A statement under subsection (1) or (2) above shall state, in relation to the relevant record concerned, its nature, current location and condition and will only contain personal information to the extent that is necessary and proportionate for the discharging of functions under this Part.
- (4) Where the Authority receives a statement under subsection (1) or (2), or a request under Head 25 [Secondary Information source or other person may request transfer of relevant record], it may in accordance with subsection (5) issue to the secondary information source concerned a direction in writing, directing it to transfer to the Authority, on the date specified in the direction, the relevant records specified in the direction. The direction shall cite that the transfer is required on the basis of public interest, the intended use of the records and the safeguards in place to store and maintain the records.
- (5) When issuing directions under subsection 4, the Authority shall have regard to any factors which may indicate that specific records may be at risk and should be transferred to the Authority at the earliest opportunity, and in the public interest.
- (6) The secondary information source shall comply with a direction issued by the Authority under subsection (4).
- (7) The date specified in a direction under subsection (4) shall be—
  - (a) not later than 6 months after the date of the direction, or
  - (b) where the Authority is not satisfied that it will be in a position to take the relevant records concerned into its charge by a date referred to in paragraph (a), such later date as is approved by the Minister.

- (8) The Authority may issue to a person, being a person other than an information source, who is in possession of a relevant record, a direction in writing directing the person to transfer to the Authority, on the date specified in the direction, the relevant records specified in the direction.
- (9) A persons to whom a direction is issued by the Authority under subsection (8) shall comply with that direction.
- (10) The Authority shall make all necessary arrangements in respect of the transfer to it of records pursuant to a direction under this section or pursuant to Head 25, including all necessary arrangements to ensure safe receipt by it of the records concerned and including specifying whether an original or a copy should be transferred, and if the latter, the format to be transferred.

### **Explanatory Notes:**

The Authority can issue a direction to a Secondary Information Source requesting it to outline the relevant records it holds. Following receipt of that statement, the Adoption Authority must issue a written direction within 6 months directing that the relevant records be taken into the charge of the Authority.

However, the Adoption Authority must not issue a direction until such time as it is satisfied that it is in a position to take into its charge the records that are to be transferred.

The Authority is also empowered to issue a direction to a person, other than an information source, to transfer relevant records to it. This provision is required to facilitate a smooth transfer of records which are held by persons who may hold minimal records (for instance doctor's surgery) and do not necessitate the prescribing as an information source.

The Authority is empowered to decide on the time, manner and format of the transfer of any records. It is intended that the Authority could direct the transfer of all or some of the records held by the body and that the Authority can prioritise the transfer of records that are considered to be at risk. These measures are to ensure that the Authority has the appropriate resources and storage facilities in place before transfer takes place. It is also to ensure that the Authority can take decisions on transfer according to what it decides is priority and can decide to take a copy of a record/s where that is considered more appropriate. The Authority will make all arrangements to ensure it receives the records safely.

The principles of data protection will be respected in the exchange and processing of all data in this Head. The provisions must be explicit on the lawful basis for processing and specify safeguards in place in particular as the data protection right to erasure is impacted by the necessity to safeguard records in the public interest.

## **Head 25 – Secondary Information source or other person may request transfer of relevant record**

*Provide along the following lines:*

- (1) A secondary information source may request the Authority to accept the transfer of records, and give reasons therefor, and the Authority shall have regard to the request in issuing directions under Head 24 [Secondary Information source to transfer relevant records where directed by Authority].
- (2) A person, other than an information source, who is in possession of a relevant record, may request the Authority to accept the transfer of records, and give reasons therefore, and the Authority shall have regard to the request in issuing directions under Head 24 [Secondary Information source to transfer relevant records where directed by Authority].

### **Explanatory notes:**

A secondary information source or a person who is not an information source can request the transfer of records to the Authority and give reasons why the transfer should happen.

However, any transfer can only take place on foot of a direction issued by the Authority.

All transfers of records must respect the principles of data protection and the provisions must be explicit on the lawful basis for processing and specify safeguards in place in particular as the data protection right to erasure is impacted by the necessity to safeguard records in the public interest.

## **Head 26 - Authority and Agency to retain relevant records in respect of future adoptions**

*Provide along the following lines:*

- (1) Where, on or after the date on which this section comes into operation, the Authority makes an adoption order, the Authority shall, insofar as such records are available to it, retain relevant records in respect of the adopted child who is the subject of the order.
- (2) Where, on or after the date on which this section comes into operation, the Authority makes an adoption order, the Agency shall, insofar as such records are available to it, retain relevant records in respect of the adopted child who is the subject of the order.

### **Explanatory notes**

This Head serves to clarify that in future adoptions, any relevant records held or created should be maintained by each respective body.

The Adoption Authority receives significant information from Tusla to facilitate the granting of an adoption order including birth parent information and early life type information particularly in cases of foster care to adoption. This Head should not impact on that very necessary information sharing.

## **Head 27 – Amendment to National Archives Act 1986**

*Provide along the following lines:*

The schedule to the National Archives Act 1986 is amended to add the Adoption Authority of Ireland to its schedule and any other amendments required to make the Adoption Authority a Place of Deposit for records.

### **Explanatory notes:**

This is to ensure that there is no conflict for Government Departments who are obligated to transfer records to the National Archives.

## Head 28 - Search powers

*Provide along the following lines:*

- (1) An authorised officer may, for a purpose referred to in subsection (12), do any of the following:
  - (a) subject to subsections (3) and (5), enter and inspect any place, being a premises of a person referred to in subsection (12) at which the Authority has reasonable grounds to believe that a relevant record is being kept;
  - (b) at such place inspect and take copies of any relevant records (including records stored in non-legible form), or extracts therefrom, that he or she finds in the course of his or her inspection;
  - (c) require any person at any such place, including the owner or person in charge of the place, to produce to the authorised officer such records (and in the case of records stored in non-legible form, produce to him or her a legible reproduction thereof) that are in that person's possession or procurement, or under that person's control, as that authorised officer may reasonably require for the purposes of his or her functions under this section;
  - (d) subject to an order being obtained for such purpose from the District Court under subsection (7), seize and retain any such records from such place and take any other steps which appear to the authorised officer to be necessary for preserving or preventing interference with such records;
  - (e) where there is data equipment at the place which the authorised officer reasonably believes is or has been used in connection with the production or storage of a relevant record, require any person—
    - (i) who uses the data equipment or on whose behalf the data equipment is used, or
    - (ii) having charge of, or who is otherwise concerned with the operation of, such equipment, to afford the authorised officer all reasonable assistance in relation to the operation of such equipment and any associated apparatus or material;
  - (f) require any person at the place concerned, including the owner or person in charge of that place, to give the authorised officer such information and assistance as the authorised officer may reasonably require for the purposes of his or her functions under this section.
- (2) Subject to subsection (5), an authorised officer may use reasonable force, if necessary, to enter a place referred to in subsection (1)(a), to exercise his or her powers under this section.
- (3) An authorised officer may enter and inspect a place under subsection (1)—

- (a) at any time during normal business hours with or without prior notice to the person in charge of the place where an authorised officer reasonably believes that relevant records are being kept at that place, and
  - (b) at any other time on reasonable notice to the person in charge of the place.
- (4) When performing a function under this section, an authorised officer may, subject to any warrant under subsection (6), be accompanied by such number of other authorised officers or members of the Garda Síochána as he or she considers appropriate.
- (5) An authorised officer shall not enter a dwelling other than—
  - (a) with the consent of the occupier, or
  - (b) pursuant to a warrant under subsection (6).
- (6) Upon the sworn information of an authorised officer, a judge of the District Court may, for the purposes of enabling an authorised officer to carry out an inspection of a place at which the authorised officer has reasonable grounds for believing a relevant record is being kept, issue a warrant authorising a named authorised officer accompanied by such other authorised officers or members of the Garda Síochána as may be necessary, at any time or times, before the expiration of one month from the date of issue of the warrant, to enter the place (if necessary by using reasonable force) and exercise the powers of an authorised officer under subsection (1).
- (7) The District Court may, on application to it in that behalf by the authorised officer concerned, make an order authorising that officer, accompanied by such other authorised officers or members of the Garda Síochána as may be necessary, to exercise his or her powers under subsection (1)(d) where the Court is satisfied it is necessary for the purposes referred to in that subsection.
- (8) The jurisdiction conferred on the District Court by this section shall be exercised by a judge of the District Court assigned to the District Court district in which the place referred to in subsection (1) is situated.
- (9) The Authority may appoint in writing such persons or classes of person as he or she considers appropriate to be authorised officers for the exercise of all or any of the functions conferred on an authorised officer under this section.
- (10) An authorised officer appointed under subsection (9) shall be furnished with a warrant of his or her appointment and, when exercising a function conferred on him or her as an authorised officer, shall, if requested by a person affected, produce the warrant, or a copy of it, to that person.
- (11) An appointment under this section as an authorised officer shall cease—
  - (a) if the Authority revokes the appointment,
  - (b) if the appointment is for a fixed period, on the expiry of that period, or
  - (c) in the case of a person who, on the date of the appointment, was a member of staff of the Authority, if he or she ceases to be a member of staff of the Authority.
- (12) The purposes referred to in subsection (1) are the purposes of ensuring compliance by—

- (a) an information source with its obligations under this Act, or
  - (b) a person to whom a direction under section 3(6) is issued with the direction.
- (13) A reference in this section to a relevant record shall be construed, in the case of a person to whom subsection (12)(b) applies, as a reference to a relevant record specified in the direction referred to in that paragraph.
- (14) In this section, “place” includes—
- (a) a dwelling or a part thereof,
  - (b) a building or a part thereof, and
  - (c) a vehicle, whether mechanically propelled or not.

### **Explanatory notes**

The purpose of this Head is to provide for the appointment of authorised officers and to replicate the powers given to authorised officers in recent legislation such as the Data Protection legislation.

In their course of their duties and in order to properly discharge their function an authorised officer shall be able to process non relevant records.

This provision is to ensure that the Adoption Authority can carry out its function of taking charge of relevant records in accordance with the other sections of Part 6.

The role of the authorised officer will be important in ensuring the smooth transfer of relevant records to the Adoption Authority. While an authorised officer will have powers to seize documents, this is a cautionary power, the other provisions of Part 6 mean that in most cases seizing will not be necessary and the relevant records will transfer in accordance with a direction issued by the Adoption Authority.

**PART 7**  
**AMENDMENT OF CIVIL REGISTRATION ACT**

**Head 29- Interpretation**

*Provide along the lines of:*

In this Part–

‘Act of 2004’ means the Civil Registration Act, 2004;

‘Act of 2018’ means the Data Protection Act, 2018;

‘General Data Protection Regulation’ means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);

‘Minister’ means the Minister for Social Protection;

‘Register of Births’ means the register maintained under section 13(1)(a) of the Civil Registration Act, 2004;

‘register’ means the Register of Acknowledged Identity established and maintained in accordance with Head 32 [Register of Acknowledged Identity], sub-section (1);

‘affected person’ means a person -

- (a) the particulars of whose birth are falsely and incorrectly recorded in an entry in the Register of Births, and
- (b) where the persons named as mother, and if applicable father, in the said entry assumed the role of parents in relation to the person and treated that person as their lawful child, and
- (c) where the entry in the Register of Births was made before the 31 day of December 1970,

and includes a person in respect of whom the entry in the Register of Births was already amended or cancelled pursuant to sections 63, 64, or 65 of the Act of 2004 prior to the enactment of this Act.

### **Explanatory Notes**

This Head defines the key terms to be used in the draft Bill.

An 'affected person' is defined in a manner that focuses on those persons affected by an incorrect record in the Register of Births. The record is incorrect by virtue of the mother, and if applicable father, who are named in the birth record not being the birth parents of the relevant person, while having assumed the role of birth parent(s) and treated that person as their lawful child.

The provision will relate to any person who meets the criteria and was registered prior to the 31 day of December 1970.

To ensure consistency, a record will not be excluded simply because the birth record was previously corrected in some manner under the Civil Registration Acts.

### **Head 30- Entitlement of Registrar General to Request and Receive Information**

*Provide along the lines of:*

- (1) Where an tArd-Chláraitheoir has a reasonable belief that any person or body has within their possession or procurement, information or documents concerning the birth, or the registration of the birth, of an affected person, or of a person whom an tArd-Chláraitheoir reasonably believes may be an affected person, he or she shall be entitled to request and to receive those documents or that information from that person or body for the purposes of determining and ensuring that the Register of Births accurately records the particulars of birth of persons registered thereunder.
- (2) A person or body may give to an tArd-Chláraitheoir information or documents concerning the birth, or the registration of the birth, of an affected person, or of a person whom they reasonably believe may be an affected person for the purposes of determining and ensuring that the Register of Births accurately records the particulars of birth of persons registered thereunder.
- (3) Notwithstanding any other provision of law, a person or body who receives a request from an tArd-Chláraitheoir pursuant to sub-section (1) shall provide such information or documents to him or her within the time specified in the request or such further time as he may agree.
- (4) Notwithstanding any provision of the General Data Protection Regulation or the Act of 2018, an tArd-Chláraitheoir shall not be obliged to notify the data subjects whose personal data is contained in the information or documents received pursuant to sub-section (2) or (3), provided no correction or amendment is to be completed pursuant to section 63, 64 or 65 of the 2004 Act.

#### **Explanatory Note:**

The provisions in this Head are to ensure that information on an incorrect birth can be sought and shared with the General Register Office and provides a lawful basis for any person or body who is possession of such information to provide it to the General Register Office for the purpose of enabling correction of an entry in the Birth Register.

### **Head 31- Amendment or cancellation of entries in the Register of Births**

*Provide along the lines of:*

- (1) An tArd-Chláraitheoir shall be entitled to register, amend or to cancel an entry in the Register of Births to ensure that the particulars of birth of an affected person are accurately and correctly recorded in the Register of Births.
- (2) In the event that an tArd-Chláraitheoir intends to use the power identified in sub-section (1), he or she shall make reasonable attempts to notify the individual(s) whose personal data shall be amended or cancelled thereby of his intention to exercise his power.
- (3) Each individual notified in accordance with sub-section (2) shall be entitled to make submissions to an tArd-Chláraitheoir in respect of his or her intended use of his power in sub-section (1), within such reasonable period of time as an tArd-Chláraitheoir may specify in the notification.
- (4) Having considered any submission received by him or her in accordance with sub-section (3), if an tArd-Chláraitheoir is satisfied that the entry in the Register of Births is inaccurate, he or she shall register, amend or cancel the entry in the Register of Births pursuant to his or her power in sub-section (1).
- (5) A decision of an tArd-Chláraitheoir to exercise the power specified in sub-section (1) may be appealed in accordance with section 60(8) of the Act of 2004.

#### **Explanatory Note**

This Head provides an tArd-Chláraitheoir with the powers to register, amend or cancel a birth in the Register of Births for the purpose of ensuring an accurate and correct entry. It provides for consultation with the persons affected and for a right of appeal.

## Head 32- Register of Acknowledged Identity

*Provide along the lines of:*

- (1) An tArd-Chláraitheoir shall establish and maintain a Register to be known as the “Register of Acknowledged Identity”.
- (2) In the event that an tArd-Chláraitheoir uses the power specified in Head 31 [Amendment or cancellation of entries in the register of births], he or she shall, on application by an affected person, register and record in the register particulars of the birth and the assumed parentage of the affected person in accordance with the provisions of Regulations made by the Minister pursuant to this section.
- (3) A person in respect of whom particulars of birth and parentage are registered and recorded in the Register of Acknowledged Identity shall be entitled to request and to obtain from an tArd-Chláraitheoir a Certificate, which shall be known as a “Certificate of Acknowledged Identity”, giving particulars of his or her birth and parentage as recorded in the register, subject to compliance with Regulations made by the Minister pursuant to this section.
- (4) A certified copy of an entry in the register of acknowledged identity, if purporting to be issued under the seal of Oifig an Ard-Chláraitheora shall be received, without further proof, as evidence of the facts stated therein and any requirement of law for the production of a certificate of birth shall be satisfied by the production of the certified copy.
- (5) Where a person has requested and obtained a Certificate of Acknowledged Identity from an tArd-Chláraitheoir he shall be considered for all purposes to be a lawful child of the persons who assumed his or her parentage and shall be so treated as and from the date of birth, and any provision of a statute, contract, deed, or will affecting such person shall be so construed unless, at the time of obtaining such Certificate, he or she has elected, in accordance with any Regulations promulgated by the Minister for this purpose, that this subsection shall not apply to him or her.
- (6) Nothing in this section shall restrict or limit the right of a person who has obtained a Certificate of Acknowledged Identity to trace and to obtain information in regard to his or her biological parents as permitted and provided by law.
- (7) The Minister for Social Protection, in consultation with the Minister for Children, Equality, Disability, Integration and Youth, shall be entitled to make regulations to ensure the effective operation of this section, including but not limited to, regulations specifying the particulars of birth and parentage to be recorded in a Certificate of Acknowledged Identity.

### Explanatory Note

This provision provides for the establishment of a new register to record the actions undertaken by an tArd-Chláraitheoir and to enable relevant certificates to be issued to a person who is the subject of an incorrect birth registration in their social identity (i.e. the name by which the person has lived as opposed to their birth identity). It further provides that such a certificate will be recognised as the person’s birth certificate for all lawful purposes.

### **Head 33- Confirmation of legal certainty in respect of acts executed**

*Provide along the lines of:*

Contracts entered into or declarations given by an affected person prior to the commencement of this Act should not be rendered invalid solely by reason of an tArd-Chláraitheoir determining that the particulars of birth of the affected person entered in the Register of Births are inaccurate, and amending or cancelling the particulars so recorded.

#### **Explanatory Note**

This Head is to provide assurance that any transaction entered into by a person in their social identity (i.e. the name by which the person has lived) will not be invalidated simply because they were the subject of an incorrect birth registration.

**PART 8**  
**MISCELLANEOUS**

**Head 34 - Designation of Relevant Bodies**

*Provide along the following lines:*

- (1) The Minister may make regulations designating the bodies which shall be relevant bodies for the purposes of this Act.
- (2) Bodies may be designated as relevant bodies where the Minister is of opinion that such designation is necessary to ensure that relevant persons can access relevant records held by the bodies.

**Explanatory Note**

This Head enables the Minister to designate by regulation the persons or organisations which qualify as relevant bodies to whom an application for information under Parts 2 and 3 may be made. While the AAI and Tusla are already designated as relevant bodies in the Act, this approach provides both flexibility and clarity in terms of identifying other bodies to whom a person could apply for access to information and records. This could include statutory bodies such as Government Departments or Agencies, as well as non-statutory bodies, such as religious congregations who may hold records which containing birth and early life information.

### **Head 35 - Use of Database and Records of the Commission of Investigation into Mother and Baby Homes and certain related matters**

*Provide along the following lines:*

- (1) In this section-
  - “Commission” means the commission of investigation established by the Commission of Investigation (Mother and Baby Homes and certain related Matters) Order 2015 (S.I. No. 57 of 2015);
  - “database” means the databases of residents of the institutions (specified in the Appendix to the terms of reference of the Commission set out in the Schedule to the Commission of Investigation (Mother and Baby Homes and certain related Matters) Order 2015 (S.I. No. 57 of 2015)) created by the Commission);
  - “related record” means—
    - (a) any evidence within the meaning of the Act of 2004 received by the Commission,
    - (b) any document created by or for the Commission within the meaning of section 43 of that Act, or
    - (c) a copy of any such evidence or document, from which information was obtained for the purpose of creating the database.
- (2) The database and related records may be accessed and processed by the Agency for the purpose of responding to applications made under Part 2, Part 3 or Part 4 of this Act.
- (3) Information derived from the database and related records may be shared with the Authority for the purpose of responding to applications made under Part 2, Part 3 or Part 4 of this Act.
- (4) The records of the Commission deposited with the Minister may be accessed and processed by the Department of Children, Equality, Disability, Integration and Youth, in circumstances where it is designated as a relevant body, for the purpose of responding to applications made under Part 2 and Part 3.

#### **Explanatory Notes:**

This Head provides a legislative basis for Tusla to process the database and related records transferred to it by the Mother and Baby Homes Commission of Investigation for the purposes of:

- (1) responding to requests for a birth certificate, birth information, early life information, care information or medical information, including sharing information with the AAI for the purposes of determining a birth parent’s contact preference prior to releasing a birth certificate or birth information,
- (2) responding to requests for a tracing service, and
- (3) assisting the AAI where it receives a request for a tracing service.

This also provides a legislative basis for the Department of Children, Equality, Disability, Integration and Youth to process the Commission’s archive for the purposes of responding to requests for information under Parts 2 and 3 of this Act.

### **Head 36 – Agency and Authority to offer support and guidance**

*Provide along the following lines:*

- (1) The Agency or the Authority may provide assistance insofar as practicable to a relevant person:
  - (a) who wishes to make an applicant pursuant to Head 3 [Relevant person may apply for copy of birth certificate] in relation to the making of an application to the General Register Office,
  - (b) who wishes to make an application pursuant to Head 6 [Relevant person may apply for information and items] in relation to:
    - i. identifying the relevant body who may hold the categories of information set out in Head 6 [Relevant person may apply for information and items] pertaining to the relevant person; and
    - ii. the making of an application under Head 6 [Relevant person may apply for information and items] to the relevant body.
  - (c) who wishes to make an application for a tracing service under Part 4,
  - (d) who wishes to make an application to the Contact Preference Register under Part 5.
  
- (2) The Agency and the Authority may also offer support to a person as part of the provision of information requested from a relevant body by means of an application made under Parts 2, 3, 4 or 5. This could include support in relation to reading and understanding records being provided on foot of an application, and support where information could be potentially distressing to the applicant.

#### **Explanatory notes:**

The Head on support and guidance is to empower Tusla and the Authority to provide support and assistance to persons making applications under the Act.

## **Head 37 – Offences**

*To provide along the following lines:*

- (1) A person who is a primary or secondary information source and who conceals, destroys, mutilates or falsifies a relevant record shall be guilty of an offence.
- (2) A person who is a primary or secondary information source and who fails to comply with a direction of the Authority under Part 6 shall be guilty of an offence.
- (3) A person who fails to comply with a direction of the Authority under Part 6 shall be guilty of an offence.
- (4) A person guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months, or both, or
  - (b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 3 years, or both.
- (5) Where an offence under this section is committed by a body corporate and is proved to have been so committed with the consent or connivance of any person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person shall, as well as the body corporate, be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

### **Explanatory notes:**

This Head provide for offences in respect of the concealment, mutilation, destruction or falsifying of records.

## Head 38 - Immunity

*To provide along the following lines:*

- (1) Subject to Article 82 of the Data Protection Regulation, a person to whom this subsection applies shall not be liable in damages in respect of any act done or omitted to be done by it or him or her in the performance, or purported performance, of its, his or her functions under this Act, unless the act or omission concerned was done in bad faith.
- (2) Subject to Article 82 of the Data Protection Regulation, the State shall not be liable in damages in respect of any act done or omitted to be done by a person to whom subsection (1) applies, in the performance, or purported performance, by the person of its, his or her functions under this Act unless the act or omission concerned was done in bad faith.
- (3) Subsection (1) applies to—
  - (a) the Authority,
  - (b) the Agency,
  - (c) the members or former members of the Board of the Authority,
  - (d) the members or former members of the Board of the Agency,
  - (e) the employees and former employees of the Authority,
  - (f) the employees and former employees of the Agency.
  - (g) Relevant bodies designated under this Act.

## Explanatory Notes

The Head on immunity is to protect an employee from liability for providing information where the processing of that information, including its release, is in accordance with this this legislation and where the employee was acting in a reasonable manner.

### **Head 39 - Accuracy of information available to relevant bodies**

*To provide along the following lines:*

- (1) Subject to Article 82 of the Data Protection Regulation, a relevant body shall not be liable in damages in respect of the accuracy of information processed, including the sharing or releasing of information, or facilitating contact between individuals, in the performance of their functions under these Heads.
- (2) A relevant body, discharging their functions under Part 2, 3, 4, or 5 shall include a statement to the applicant as to the nature and the likely accuracy of the relevant records.

#### **Explanatory notes**

Historic records are held by the State and other bodies where neither the accuracy nor the completeness can be confirmed.

This Head is to ensure that a person is informed, based on a reasonable assessment by the relevant body, as to the likely accuracy of the records.

This Head should also ensure that persons who are put in contact under Part 4 are provided with information regarding the nature and likely accuracy of records pertaining to them.

## **Head 40 – Restriction of rights and obligations under the GDPR**

*Provide along the following lines:*

- (1) The rights and obligations provided for in Articles 12 to 22 and Article 34, and in Article 5 (in so far as any of its provisions correspond to the rights and obligations in Article 12 to 22), of the Data Protection Regulation, are restricted pursuant to Article 23(1)(i) of the Data Protection Regulation to the extent necessary to enable persons to access birth and related information in accordance with the provisions of this Act and to enable the Agency and the Authority to provide a tracing service in accordance with the provisions of this Act.
- (2) The public information campaign referred to in Head 3(4) and Head 7(4) shall publicise the fact of that the rights of data subjects under the Data Protection Regulation are restricted in the manner set out in subhead (1).

**Schedule 1**  
**List of Institutions**

**A. Mother and Baby Home Institutions**

St Patrick's / Pelletstown, Navan Road, Dublin 7  
 The Tuam Children's Home, Tuam, Co. Galway  
 Bessborough Mother and Baby Home, Cork  
 Manor House Castlepollard  
 Sean Ross Abbey  
 Árd Mhuire Dunboyne  
 Bethany Home, Dublin  
 Denny House, Dublin  
 Miss Carr's Flatlets, Dublin  
 The Regina Coeli Hostel, Dublin  
 The Castle Newtowncunningham, Co. Donegal  
 The County Clare Nursery, Kilrush, Co. Clare  
 Belmont Flatlets, Dublin  
 St. Gerard's, Dublin

**B. County Home Institutions**

Sacred Heart Home and Hospital, Carlow  
 St Felim's County Home and Hospital, Cavan  
 St Joseph's Hospital, Ennis  
 Cork County Home and District St Finbarr's  
 Our Lady of Lourdes Home, Midleton, Cork  
 Mount Carmel Home, Clonakilty, Cork  
 St Patrick's Hospital, Fermoy, Cork  
 St Joseph's Home, Stranorlar, Donegal  
 Dublin Union (St Kevin's Institution)  
 St Brendan's Home, Loughrea, Galway  
 St Columbanus Home, Killarney, Kerry  
 St Vincent's Hospital, Athy, Kildare  
 St Columba's County Home, Thomastown, Kilkenny  
 St Vincent's Hospital, Mountmellick, Laois  
 St Patrick's Home, Carrick-on-Shannon, Leitrim  
 St Ita's Home, Newcastlewest, Limerick  
 St Camillus Hospital, Limerick  
 St Joseph's Hospital, Longford  
 Sacred Heart Home, Castlebar, Mayo  
 St Joseph's Home, Trim, Meath  
 St Mary's Hospital, Castleblayney, Monaghan  
 St Vincent's Hospital, Tullamore, Offaly  
 Sacred Heart Home, Roscommon  
 St John's Hospital, Sligo  
 Hospital of the Assumption, Thurles, Tipperary  
 St Patrick's Hospital, Cashel, Tipperary  
 St John's Hospital, Dungarvan, Waterford  
 St Mary's Hospital, Mullingar, Westmeath

St John's Hospital, Enniscorthy, Wexford  
St Colman's, Rathdrum, Wicklow