

## **FAQS ON (I) BIRTH INFORMATION AND TRACING LEGISLATION AND (II) ILLEGAL BIRTH REGISTRATIONS LEGISLATION**

**11 May 2021**

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**1. What is the purpose of the proposed Birth Information and Tracing legislation?**

The purpose of the legislation is to recognise the importance of a person knowing their origins, and to achieve this through the full release of the birth certificate, birth information, early life information, care information and medical information for all persons who were adopted, boarded out, the subject of an illegal birth registration or who otherwise have questions in relation to their origins.

In addition, the legislation will provide for a robust tracing service underpinned by statute. This service will facilitate tracing of relatives for the purpose of contact, or for seeking or sharing information.

The legislation will also provide for the establishment of a statutory Contact Preference Register. This register will replace the existing administrative National Adoption Contact Preference Register (NACPR) which is currently run by the Adoption Authority of Ireland. It will allow individuals to lodge their preferences in relation to contact with relatives, and indicate if they are willing to provide information. It will also enable the lodging of contemporaneous information, including medical information.

Finally, the legislation will provide for the safeguarding of relevant records and will create offences for destroying, falsifying or mutilating those records.

**2. Who is covered by this legislation and what will it mean for them?**

These legislative proposals will provide access to birth certificates, birth information, early life information, care information and medical information for the following people over the age of 16:

- an adopted person
- a person who is or has been the subject of an incorrect birth registration
- a person who has been nursed out or boarded out or the subject of pre-adoptive foster care
- a person who has reasonable grounds for suspecting that they may have been the subject of an incorrect birth registration
- a person who has reasonable grounds for suspecting that they may have been nursed out or boarded out or the subject of pre-adoptive foster care
- a person who does not fall into any of the above categories but who resided as a child in a Mother and Baby Home Institution or County Home listed in schedule 1 of the General Scheme of the Birth Information and Tracing Bill.

This legislation will, for the first time, create a right for these people to access information relating to their identity at birth. Up to now, access to this information has been restricted because it is information that is shared between the child and the parent, and data protection considerations prevented release without consent.

The legislation will also ensure that these people can avail of a robust tracing service where they wish to make contact or share information with birth relatives.

### 3. What information will be accessible under this legislation?

The legislation takes a comprehensive approach, providing access to birth certificates, birth information, early life information, care information, and medical information.

- Birth Certificates and Birth Information can include:
  - Forename(s) and surname of child; Sex of child; Date and place of birth; Time of birth.
  - Forename(s), surname, birth surname, address and occupation of mother; Former surname(s) (if any) of mother; Date of birth of mother; Marital status of mother; Birth surname of mother's mother.
  - Forename(s), surname, birth surname, address and occupation of father; Former surname(s) (if any) of father; Date of birth of father; Marital status of father; Birth surname of father's mother.
  - Forename(s), surname, qualification, address and signature of informant.
  - Date of registration and Signature of registrar.
  
- Early life information in relation to a person can include:
  - Where he or she lived, and for what dates.
  - Where applicable, the date and place of his or her baptism or any other similar religious or spiritual ceremony performed in respect of him or her.
  - His or her birth weight.
  - Information on his or her health, physical or emotional development.
  - Information on any medical treatments, procedures or vaccinations.
  - Information on how long his or her birth mother remained with him or her in the same place of residence.
  - Information on whether the person and his or her birth mother left their first place of residence (eg. Mother and Baby Home Institution) separately or together.
  - Information on visits or communications by birth relatives.
  - Information on whether the person has a birth relative<sup>1</sup>, whether living or deceased and, in the case of a birth sibling, the sex of that birth sibling and whether they are older or younger.
  
- Care information can include:
  - Information relating to the persons who cared for the relevant person,

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<sup>1</sup> A “birth relative” of a relevant person is (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. A “birth sibling” of a relevant person is a person who shares the same birth mother or birth father, or both, as him or her.

- The location where that care was provided,
  - The duration for which the person was cared for at a given location or by a given person,
  - The person or entity that caused the care arrangement to be established,
  - The name of any person who made arrangements for the person's adoption, for a foster care arrangement or placed the person with prospective adopters,
  - The name of any person who made arrangements for the relevant person to be nursed out or boarded out.
- Medical information includes information relating to a relevant person's medical history, or the medical history of his or her birth parent or birth relative, insofar as it is relevant to a person.

**4. Will people be able to get their birth certificates?**

Yes. The proposed legislation will provide for full access to birth certificates for the following people over the age of 16:

- an adopted person
- a person who is or has been the subject of an incorrect birth registration
- a person who has been nursed out or boarded out or the subject of pre-adoptive foster care
- a person who has reasonable grounds for suspecting that they may have been the subject of an incorrect birth registration
- a person who has reasonable grounds for suspecting that they may have been nursed out or boarded out or the subject of pre-adoptive foster care
- a person who resided as a child in a Mother and Baby Home Institution or County Home listed in schedule 1 of the General Scheme of the Birth Information and Tracing Bill.

Persons will be able to access their birth certificate through the GRO, or where the certificate is held on the files of Tusla or of the Adoption Authority or on the files of any other relevant body designated by the Minister under this legislation.

## 5. Where will people apply to get their information and how will the process work?

The legislation is focused on supporting people to get answers to questions on their origins as quickly as possible. For this reason, it adopts an approach of opening up access to records where they reside. In a similar manner to Subject Access Requests under GDPR, people will be able to apply to any relevant body that may hold information about them.

The legislation defines a relevant body as including the Adoption Authority of Ireland, Tusla and any other body designated as a relevant body by the Minister. 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 contain birth and early life information.

The Minister will ensure that strong supports are in place to assist people in identifying a relevant body who may hold records relevant to them and in making an application.

A person can apply to any relevant body for their birth certificate, birth information, early life information, care information and medical information.

In the case of the **birth certificate and birth information**, the information will be released in accordance with the process set out in section 6 below.

In the case of **early life and care information**, the information will be automatically released on receipt of an application from the person.

In the case of **medical information**, a person will automatically be provided with any medical information which relates to themselves. Information relating to a birth relative which is relevant to the medical history or health of the applicant and is necessary for reasons of substantial public interest, will be released to the person's nominated medical practitioner. In these circumstances, the information 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.



**6. Will any restrictions apply?**

The Bill provides for access to birth certificates and birth information. This right is not restricted, and individuals will, for the first time, have an unqualified right to the information in question.

Where a person applies for a birth certificate or birth information, the relevant body who receives the application must check with the Adoption Authority for any contact preferences registered by the birth parent. Where there is nothing on the register or there is a preference for contact, the relevant body will communicate this when providing the birth certificate or information to the applicant.

If a preference for no contact is communicated by a birth parent, then the person will be informed of this via an information session with a social worker and the birth certificate or birth information will then be provided to the applicant.

The applicant will be informed of their entitlement to receive their birth certificate and information, their birth parent's expressed wish for no contact, and of the importance of respecting their privacy and preference in relation to contact. The information session will be conducted sensitively and respectfully, acknowledging the rights and wishes of all parties.

**7. Will people be able to access medical information?**

Yes. The proposed legislation will allow people access to their own medical information. It will also allow for the release of medical information relating to a birth parent or birth relative, via a nominated medical practitioner (eg. their GP), where the information is relevant to the medical history or health of the applicant and is necessary for reasons of substantial public interest. In these circumstances, the information 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 legislation will also allow for the sharing of contemporaneous medical information, which can be lodged and provided through the Contact Preference Register or by applying for a Tracing Service as a means of actively locating a person for the purposes of providing them with such information.

**8. Will people get their information immediately?**

On commencement of the legislation, a three month window will open, allowing for birth parents to register a preference for contact or no contact. Once this three month window closes, people will be able to apply for their information.

Contact preferences will still be accepted after this window closes but, in such cases, it cannot be guaranteed that the person, to whom the contact preference applies, will not have already applied for and received their information.

The legislation requires a public awareness campaign to alert birth parents to the provisions of the new legislation and to the fact that birth information will be released. It will inform them of the establishment of the Contact Preference Register, and the facility to lodge their preferences in relation to contact.

Where a no contact preference is lodged, the applicant for the information must attend an information session (see question 6), after which the information will be provided to them.

## 9. What supports are available for people?

The legislation ensures that the Adoption Authority of Ireland and Tusla can provide assistance and guidance to people in relation to the services provided under the Act. They can help people to identify where their records might be held and guide them through the process. This guidance and support will be available in relation to making an application for a birth certificate or information, or for tracing, or in relation to applying to the Contact Preference register.

Additionally, the legislation provides a basis for the Adoption Authority and Tusla to support people in receiving their information. 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 a person.

The proposed legislation provides that, where birth parents register a preference for no contact, they will be informed of their right to access counselling, to be provided by Tusla.

More generally, the following supports are currently available to the categories of persons who fall within the provisions of the legislation:

- There is a dedicated webpage in respect of counselling services for former residents of Mother and Baby Homes at the following link:
- <https://aai.gov.ie/en/component/k2/item/307-mother-and-baby-homes-report-counselling-service.html>
- TUSLA social workers are engaging with people who they have identified as having an incorrect birth registration and ensuring that counselling support is available via Barnardos. Further detail available here:  
<https://www.tusla.ie/services/alternative-care/adoption-services/tracing-service/st-patricks-guild-adoption-records/>
- Barnardos also runs a confidential and professionally staffed helpline open Monday – Friday.
- For anyone who feels they may need professional counselling support due to experiencing abuse or trauma, the HSE National Counselling Service is available from Monday to Friday between 9.30am and 5pm. Further details here:
- <https://www.hse.ie/eng/services/list/4/mental-health-services/national-counselling-service/>
- Visit [yourmentalhealth.ie](http://yourmentalhealth.ie) for more mental health support options including phone, text and online. Or call the YourMentalHealth Information Line on [1800 111 888](tel:1800111888).

**10. What is the purpose of the new Tracing service and how will it work?**

Notwithstanding the importance of access to records, a tracing service can often help people to gain richer information in relation to their origins.

While a tracing service is already provided by Tusla and the Adoption Authority, it has a limited statutory basis and has been highly constrained by the application of the GDPR in releasing information, unless all parties have consented to the release.

This legislation will put a tracing service on a robust statutory basis, which is GDPR compliant, and will allow for tracing to take place for the following purposes:

- Tracing for contact
- Tracing to share information
- Tracing to request information

Similar to the current tracing service, it will be provided by Tusla, or the Adoption Authority. Following an application for any of the three types of tracing in relation to a specific person, Tusla or the Authority will contact that specified individual to seek consent, and will facilitate the necessary follow-on actions required.

It should be noted that the application for a tracing service is in addition to the rights conferred in the legislation to access to information, including birth information. The tracing service addresses the issue of contact, with consent, and also provides a mechanism to seek, or share, information, including contemporaneous medical information.

**11. What is the purpose of the new Contact Preference Register?**

The Adoption Authority of Ireland have maintained the National Contact Preference Register, on an administrative basis, since 2005. This is a facility to allow individuals to lodge preferences in relation to contact with birth relatives, and to lodge information. Where an individual registers as wishing to have contact with a specified person, and that specified person has previously registered, and indicated a wish for contact, the Authority can match the individuals and, with the assistance of Tusla if required, facilitate a reunion.

It is considered that the register should be put on a statutory basis, to formalise the processes, and to ensure that they are GDPR compliant.

The new Contact Preference Register will be on a statutory basis, and will be a living register, maintained by the Authority, and allowing for the ongoing registering of contact preferences, and the lodging of information. It will also provide a mechanism for the sharing of provided items, including letters, photographs, mementoes or other documents or objects, and contemporaneous medical information.

The Contact Preference Register will be established immediately on enactment of the legislation. A specific focus of the Register for the first three months of operation will be the registering of contact preferences by birth parents. A public awareness campaign will alert them to the full release of birth certificates and birth information, and to inform them of their rights to register a contact preference.

The legislation also provides for the transfer of all contact preferences from the existing National Contact Preference Register to the new Register.

Where an application for a birth certificate or birth information is received by a relevant body, that body will contact the Authority, who will check the contact preferences, if any, lodged by the birth parent on the Contact Preference Register. In the case of a no contact preference, an information session will be required, prior to release of the information. In all other cases, the information will be released immediately, with the applicant informed of any preference for contact.

**12. What will happen to the existing National Adoption Contact Preference Register?**

All current entries on the National Adoption Contact Preference Register will be transferred over to the new Contact Preference Register. Following the transfer and after a period of six months, the National Adoption Contact Preference Register will be deleted.

**13. What if I already have a contact preference registered on the National Adoption Contact Preference Register?**

All entries that are transferred over from the National Adoption Contact Preference Register to the new statutory Contact Preference Register are valid, and you do not have to re-register a preference. However, it is advisable to do so if your preference has changed, or to update your information and contact details.



**14. What are the proposals in relation to safeguarding adoption and related records?**

The personal, social and historic significance of the records covered by this legislation is recognised. The proposed legislation requires the holder of relevant records to safeguard such records and creates offences for the concealment, mutilation, destruction or falsifying of records.

The legislation provides for primary and secondary information sources. The Adoption Authority and Tusla are the two primary information sources, and must retain and safeguard the records held by them.

A secondary information source, who will be a body prescribed in the legislation or by regulation at a later date, must safeguard all relevant records held by them. Those designated as secondary information sources must provide the Adoption Authority of Ireland with a statement of their relevant records and the Authority has the power to direct them to transfer those records to the authority. This ensures that records can be transferred to the Authority where they are clearly related to the subject matter of the legislation and are historic records which are not in current use.

Where someone holds records and is not a secondary information source, the legislation still imposes a responsibility on them to maintain those records, and notify the Authority that they have them.

The proposed legislation also provides that any person or body can request the Authority to take custody of its records, and the Authority will consider the request and may issue a direction for the transfer of the records accordingly.

**15. Are records being centralised in line with the commitment to create a National Memorial and Records Centre?**

On the publication of the Final Report of the Commission of Investigation into Mother and Baby Homes, the Government has made a commitment to the creation of a National Memorial and Records Centre.

In recognition of this broader commitment, this legislation does not seek to provide for mandatory centralisation of records. However, it does provide a mechanism for relevant records to be transferred from a Secondary Information Source to the Adoption Authority at the direction of the Authority. This approach recognises the need to move ahead urgently with Birth Information and Tracing legislation, while working in the medium-term towards the creation of a centralised archive which may sit within a National Memorial and Records Centre.

This approach also facilitates immediate access to records, on enactment of the legislation, without the necessity to wait until after a process of centralising and indexing those records.

**16. How is this different to the 2016 Bill?**

The Adoption (Information and Tracing) Bill 2016 sought to provide for access to birth information. That Bill was published before the coming into effect of the GDPR in 2018, and was required to balance identity rights and privacy rights of applicants and birth parents. The 2016 Bill, as published, contained measures designed to achieve this balance, as follows:

- A requirement on persons applying for birth information to sign an undertaking that they would not contact their birth parent; and
- A process whereby a birth parent could assert that there were “compelling reasons” why the information should not be released, and where that assertion had to be considered, and may in some cases have resulted in the non release of the information sought.

The current General Scheme of the Birth Information and Tracing Bill provides for full access to birth certificates and birth information in all cases, subject only to a requirement for the applicant to attend an information session where the birth parent has registered a no contact preference.

A further significant difference between the 2016 Bill and the published Heads is that the 2016 Bill provided for the centralisation of all relevant records in the Adoption Authority. The newly published General Scheme opens up access to records where they reside. It provides that records are safeguarded where they are currently held, with a facility for them to be transferred to the Adoption Authority under the direction of the Authority. The difference in approach reflects the Government commitment to a National Memorial and Records Centre.

**17. Why is the release of information possible now, but not then?**

The policy and legal issues which presented themselves in the previous attempt to legislate in this very difficult area have been re-analysed in the light of the recent full implementation and development of GDPR. GDPR has evolved since its recent inception and has provided a policy and legal pathway to recalibrate the conflicting legal rights at play and to resolve them in a constitutionally satisfactory manner.

**18. How is this legislation different to the recent private members bills on release of birth certificates?**

The Private Members Bill, Civil Registration (Right of Adoptees to Information) (Amendment) Bill 2021, deals with the release of birth certificates. The Bill seeks to allow adoptees to apply to the General Registrar's Office (GRO) for a copy of their original birth certificate. The GRO maintains an index that links an adoption certificate to the original birth certificate. Access to this index is currently restricted under the Adoption Act 2010. The Bill seeks to remove that restriction.

The Adoption (Information and Tracing) Bill 2021 and Adoption (Information) Bill 2021 address similar issues, in that they seek to provide access to birth certificates for adoptees, via the GRO index.

The proposed Government legislation also provides for access to the birth certificate but will deal comprehensively with all issues relating to access to birth and early life information. It is broader in scope and more legally robust than the opposition Bills. For example, the General Scheme of the Birth Information and Tracing Bill addresses the information needs of not just adoptees, but also other categories of persons who may have a question about their identity, including those who were boarded out or whose birth was illegally registered.

Crucially, the General Scheme of the Birth Information and Tracing Bill provides mechanisms to recognise the privacy rights of birth parents. It also provides for access to information beyond the birth certificate, addresses safeguarding of records, establishes a robust and comprehensive statutory tracing service and a statutory Contact Preference Register.

**19. How does this approach compare with the release of birth information in other jurisdictions?**

The level and type of access to birth information for adoptees varies in jurisdiction around the world. Many European States provide for an absolute or near absolute right of access to birth certificate information from a particular age. Scotland allows unrestricted access from the age of 16, while France has a system to allow for a birth mother to remain anonymous.

The approach taken in the proposed legislation has some similarities with the approach in Northern Ireland. In that jurisdiction, for a person adopted before 18 December 1987, birth information is provided once the person has attended a counselling interview.

It should be noted that there is as yet, very little case law on the application of the GDPR in the specific circumstances of birth information, which involves mixed personal data. It would be expected that as such case law develops, greater consistency in access to birth information might emerge in those countries subject to the GDPR.

It is of note that the UK previously had a system of unrestricted access to birth information, but that this has been amended more recently to provide for restrictions in exceptional circumstances.

**20. How have Birth Mothers'/Birth Parents' rights been considered in this legislation?**

The proposed legislation has required the balancing of competing rights, in complex circumstances. Both the right to identity and the right to privacy are fundamental and significant rights.

The proposed legislation recognises the overriding importance of knowing who you are, and where you come from. However, the legislation draws a clear distinction between information and contact. Persons are to be given a right to information, but equally, an individual's right to state their preference regarding contact, and to have that preference shared and respected, is protected in the legislation.

On enactment of the legislation, a public awareness campaign will alert birth parents to the fact that birth information will now be released, on application, and to their right to register their contact preferences, including a no contact preference, on the Contact Preference Register.

On enactment of the legislation a three month window opens to allow a birth mother/birth parent register a contact preference. Until this three month window closes, no applications can be made for access to birth certificates or birth information.

Counselling is available and will be offered to any birth parent who wishes to avail of it, in the process of registering a no contact preference.

If a no contact preference is registered, and a relevant person applies to access their birth certificate or birth information, the relevant person is required to attend an information session where they are informed of their birth parent's preference for no contact, and advised of the importance of respecting their preference and privacy. .

If a preference for contact is registered, a relevant person is also advised of this at the time of release of the information.

**21. What about people subject to an illegal birth registration? What issues have been progressed?**

On 29 May 2018, the then Minister for Children and Youth Affairs announced that Tusla – the Child and Family Agency had identified 126 cases where births were incorrectly and illegally registered between 1946 and 1969 in the files of Saint Patrick’s Guild (SPG), a former adoption society operated by the Irish Sisters of Charity. This means that the persons named as parents on the birth certificate were not, in fact, the child’s birth parents. The number of confirmed cases of such incorrect birth registrations has since risen to 151. Following a Government decision in May 2018, Tusla Adoption Services commenced the process of notifying the people affected.

Following publication of the Final Report of the Commission of Investigation into Mother and Baby Homes and Certain Related Matters in January 2021, the Minister for Children, Equality, Disability, Integration and Youth immediately engaged with his Cabinet colleagues in relation to setting up an Interdepartmental Group to consider issues arising in relation to the SPG cases.

The purpose of the Interdepartmental Group (IDG) was to develop a set of integrated proposals to address the issues arising for the relevant individuals across a range of areas including, in particular, birth registration, identity, parentage and inheritance. The intention was to develop a set of integrated proposals which would form the basis for consultation with the individuals concerned. The group began its work on 3rd February 2021, and reported to the Minister on 16th April 2021.

The General Scheme of the Birth Information and Tracing Bill, in Part 6, reflects the recommendations of the IDG relating to legislative amendments to the birth register. This takes account of the specific issues facing people who are the subject of an incorrect birth registration in relation to their birth registration and identity documents. It also addresses the issue of recognition of parentage in respect of the persons who raised them.

The provisions of the General Scheme relating to access to birth information and records also reflect the recommendations of the IDG. These provisions will ensure that individuals affected by incorrect birth registration can access their birth information in all cases and unlock their original birth identity.

It is the Minister’s intention to consult with those affected by incorrect birth registration on the proposals in the General Scheme in the weeks ahead.



**22. What happens next?**

It is a priority for the Minister, and for the Government, to bring the General Scheme forward towards enactment without delay.

The Minister will immediately forward the general scheme to the relevant Oireachtas Committee, who will then be responsible for the Pre Legislative Scrutiny process. It is the Minister's wish that that process would take place as quickly as possible. The Minister will also engage and consult with stakeholders and advocacy groups on the proposed legislation.

In the meantime, the Department will engage with the Office of Parliamentary Counsel to commence drafting the detailed legislation, and will engage with Tusla, the Adoption Authority and all other relevant bodies on preparations for implementation.