

30/06/2016, 12,672 entries are recorded on the Contact Register – 8,756 are adopted persons and 3,916 are birth relatives.

The Adoption Act 2010 provided for the establishment of the Adoption Authority of Ireland and gave effect to the “Hague Convention on Protection of Children and Co-operation In Respect of Intercountry Adoption”. The Adoption Act 2010 excluded any provision on information and tracing and a commitment was given by the then Minister for Children during its passage through the Houses that separate legislation would be brought forward dealing with such matters.

In late 2013 and early 2014 publicity in regard to information and tracing increased with the release of the Oscar nominated film Philomena based on the story of an Irish child placed for adoption in the 1960’s and subsequent tracing efforts on the part of the mother and son. The establishment of the Commission of Inquiry into Mother and Baby Homes also highlighted the issue. These issues further intensified the need for a legislative basis for information and tracing and in particular the need to give adopted persons a statutory entitlement to their identity.

In the Programme for Government 2011 – 2015 the Government stated that it would modernise and reform outdated elements of family law and that it would enact legislation to consolidate and reform the law on adoption. However, a core issue was always how the proposed legislation could provide identifying information about past adoptions to be given to an adopted person while having due regard to the rights of birth mothers who may wish to maintain their privacy.

The Government noted, in March 2014, the Minister for Children and Youth Affairs intention to:

- 1) provide in an Adoption (Information and Tracing) Bill for greater access to adoption records and birth information,
- 2) introduce in the same legislation, provision to ensure access to adoption records and birth information for persons adopted in the future;
- 3) have the General Scheme and Heads of an Adoption (Information and Tracing) Bill finalised on this basis as soon as possible and submitted for the consideration of Government, in advance of referral to the Oireachtas Committee on Health and Children; and
- 4) in parallel examine and implement further operational improvements to arrangements for the preservation of, and access to, adoption records.

Further issues such as informal adoption, wrongful birth registrations and inter-country adoption have all had to be given consideration in the intervening period in the context of developing legislation on information and tracing.

The Minister proposes as progressive an approach as possible within the legal and operational complexities which arise in giving effect to this objective. The overall policy objective, in bringing forward proposed legislation on adoption information and tracing, has always been to provide access to as much information as possible to those affected by adoption, including the provision of birth certificates to adopted persons.

Following extensive consultation with the Office of the Attorney General the draft scheme now proposed will give adopted persons a right to access to their birth certificate, based on a statutory declaration not to contact a birth parent.

3. Identification of Policy Options

3.1 No change

This is not an option as a decision not to legislate would mean a failure to implement a Programme for Government commitment and Government viewpoint as of March 2014.

3.2 Introduce legislation

The provision of adoption information and tracing services has operated on an administrative basis by the Adoption Authority, Tusla, the Child and Family Agency and a number of accredited bodies (agencies which have been accredited by the Adoption Authority for the purpose of providing information and tracing services) up to now. While this service is funded by the Exchequer it is not underpinned by statute. It is proposed to introduce legislation to provide for the first time, a statutory basis for the provision of this service.

The Adoption (Information and Tracing) Bill will provide that Tusla will provide information and tracing services. It will establish and maintain “The Register of Adoption Contact Enquiries. The Bill will provide that adopted persons, birth parents, relatives, a person who was in an informal arrangement where no adoption order was effected, and persons whose birth was incorrectly registered can apply for information and tracing services. It will set out the information that can be provided and the circumstances in which it can be provided. It will also provide that the Adoption Authority of Ireland will be responsible for the management of adoption records.

Preferred option – Introduce Legislation.

4. Identification of Costs

4.1 Tusla - The Child and Family Agency

Tusla has been allocated €713 million in funding for 2017 which is an increase of €37 million over its allocation for 2016. The allocation for 2017 includes funding towards implementation of the Adoption (Information and Tracing) Bill in 2017.

The Bill gives Tusla statutory responsibility for the provision of information and tracing service and provides for Tusla to establish and operate “The Register of Adoption Contact Enquiries”. Tusla will also be required to undertake an extensive awareness campaign during the six month period following commencement, which while not a statutory requirement, forms part of the suite of measures designed to protect the privacy of birth parents.

Tusla has estimated full year staffing costs for implementation of the provisions of the Adoption (Information and Tracing) Bill at €3 million (see table below).

However, actual staffing costs for 2017 are anticipated to be less than estimated, as it is not expected that the legislation will be commenced on 1 January 2017.

	WTE	Grade	Mid-point	Total salary
Investigation & Information	5	5*	44,146	299,643
Search and Reunion	30	PQSW/6* *	49,795	1,999,237
Team leader	6***	SWTL	60,648	493,975
Grade VII	1	Grade VII	53,545	72,688
Clerical Officer	3	Grade III	29,635	120,689
Total	45			2,986,232
* Skill mix element associated with social work and administrative grades ** Skill mix element associated with social work and other relevant grades *** Social work Team leader ratio to social workers is 1:6				

4.2 Adoption Authority of Ireland

The Authority has been allocated €3.840 million in funding for 2017, which is an increase of approximately €500,000 over its allocation for 2016. The allocation for 2017 includes funding towards implementation of the Adoption (Information and Tracing) Bill in 2017.

The Bill provides that the Adoption Authority of Ireland will be required to take all adoption records into its charge and will be responsible for ensuring the safeguarding of all such records. The Authority estimates costs of €1.2 million to implement the provisions of the legislation in 2017 (see table below). However, actual costs for 2017 are anticipated to be less than estimated, as it is not expected that the legislation will be commenced on 1 January 2017.

Estimated costs in 2017		
Staffing	Grade	Total Cost
	1 Principal Officer	74,401
	1 Consultant Archive Specialist	60,00
	IT System Set up – Training etc.	70,000
	2 Administrative Officer	59,984
	1 Executive Officer	27,464
	Total	291,849
File scanning, storage and retrieval		896,000
Total		1,187,849

5. Benefits

5.1 Statutory Basis for Information and Tracing Services

The Bill will provided for adoption information and tracing on a statutory basis. It will bring much needed clarity for the provision of access to as much information as possible to those affected by adoption including the provision of birth certificates to adopted persons. It will also provide a statutory basis for The Register of Adoption Contact Enquiries which will contain contact preference details and other information on applicants for an information and tracing service. The legislation will also provide for the preservation of, and access to, adoption records which are of value not only to those names in the records but are also a record of Irish social historical value.

5.2 Standardise existing practice

While significant efforts have been made by Tusla to provide information in a standardised manner, the lack of a legislative basis for the type of information that can be provided can lead to information being given out in a discretionary and potentially inconsistent manner. It is accepted that every case is different and that social workers have to ensure that the provision of information is handled in a manner that is sensitive to the individual circumstances of each case. However clarity is needed on what information an applicant is legally entitled to.

The development of a clear legislative basis for the provision of birth certificate, medical and personal information to applicants will standardise service provision and ensure the equitable treatment of applicants. The legislation, along with any guidelines developed, will ensure that information is no longer provided in a discretionary fashion. The legislation will give all applicants clarity on how to apply, the type of information to be provided and the manner in which information may be provided.

5.3 Provide Identity Information for Adopted Persons

Everyone develops an identity (most of this work happens in adolescence), but this process can be more difficult for adoptees. An adoptive identity helps individuals answer questions such as: Where did I come from? Who were my birthparents and what were the reasons they placed me with my adoptive parents? Do I have biological siblings? What parts of me are like my birth family? Who would I have been if I weren't adopted?

The process of answering these questions and forming an adoptive identity takes some effort, and it can be challenging for some adoptees. Many feel a sense of loss over a birth parent they have not met, which can lead to grief and confusion. They also may experience uncertainty about issues such as what being adopted means for their identity, what their birth parents are like, and how their adoptive parents feel about their adoption. Adopted persons also may experience differences from their adoptive family—including, but not limited to, differing ethnic and cultural orientations, personalities, appearances, and physical abilities. It is a normal part of an adoptee's experience to want to know one's origins.

Research and feedback from adoptees confirm that most adopted persons face extra complications as they follow the normal path to forming their sense of self. The

most obvious complexity is that adoptees have not one, but two families to consider as they consider what kind of person they would like to be. It is normal for adopted children to identify with some real or fantasised aspect of their birth parents, along with their interest in following in the shoes of their adoptive parents. For some adoptees, these common dual feelings can create strong conflicts of loyalty. When adoptive parents are aware of this, they can validate and support their children.

It is also known that the self-esteem of some children can be diminished by the conclusions they draw about their adoption. Children frequently wonder if they did something wrong that made their birth mother choose adoption. In addition, children often need to go through a grieving process for the “lost” birth family. If this loss is not resolved in some way, it makes it additionally difficult to move on with the developmental task of separation and individualisation from family, both adoptive and birth. As adolescents, adoptees need to continue the process of grieving and resolving the loss of the birth family. Sometimes, they experience anger, which is part of the grieving process.

Adolescents are also likely to want more information as they determine the influence of their biological family. Parents often wonder how their teens will be able to handle information that might be difficult to hear about their birth family. While some of it may be painful or confusing, facts are necessary for a teen developing identity. The reality is that unanswered questions can be disturbing for those who have little information.

6: Consultation

In 2003, a review of Irish adoption legislation was carried out with the aim of taking account of the social and economic changes that had occurred since adoption was first legislated for in 1952. A public consultation process was initiated in June 2003 by the then Minister for Children to give individuals and organizations with an interest in adoption law and practice an opportunity to contribute to the development of a modern adoption system. The written consultation exercise generated views and ideas from adopted people, natural parents, adoptive parents, adoption agencies and others involved in adoption and was followed by an oral consultation process in October 2003. A report on the consultation process *Adoption legislation: 2003 consultation and proposals for change* was published in January 2005. The report was wide ranging and made a number of recommendations, including the establishment of the National Adoption Contact Preference Register, which was subsequently established by the Adoption Authority in 2005.

The current policy was informed by consultations with the Office of the Attorney General and a number of key stakeholders at operational level. Officials met with officials in the Adoption Authority and Tusla, including consulting with the Tusla Principal Social Workers at their management forum. Officials also met with the Military Archives, the Data Protection Commissioner, Department of Social Protection and 3 accredited agencies (Cúnamh, St Patrick’s Guild and Barnardos). Consultation with key stakeholders will continue.

The General Scheme and Heads of Bill were referred to the Oireachtas Committee on Health and Children for pre-legislative scrutiny. The Committee held 3 hearings as part of its stakeholder consultation process in October and November 2015. The

Report of the Committee which was published in November 2015, made a number of recommendations which were considered by the Department and some amendments were made to the policy proposals.

7: Enforcement and Compliance

The Adoption Authority will have the power to inspect and seize records if appropriate and will appoint authorised officers with warrants to carry out any such duties. The Scheme provides for penalties for offences under the proposed legislation.

8: Review

Under the Adoption Act 2010, the Adoption Authority is required to submit an Annual Report on its activities to the Minister for Children. The Minister may also request a report relating to specific activities of the Authority.

The Child and Family Agency Act 2013 provides that Tusla must prepare an Annual Report in relation to the performance of its functions during the year.

9: Publication

The Regulatory Impact analysis will be published on the Department's website.

10 Summary / Recommended option

Introducing legislation based on option 2, is the preferred option.