BIRTH INFORMATION AND TRACING BILL 2022

Briefing Note and Amendments

28th February 2022

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About the Clann Project

The Clann Project is a multi-award-winning collaboration between Adoption Rights Alliance (ARA), Justice for Magdalenes Research (JFMR) and Hogan Lovells International LLP). Since 2015 the project has been gathering witness statements of those affected by unlawful and forced family separation in Ireland. The Clann Project spoke to 164 people and assisted 82 witnesses to provide statements to the Mother and Baby Homes Commission of Investigation and published a public group report and recommendations in October 2018.

About Article Eight Advocacy

Article Eight Advocacy is an independent not-for-profit organisation that advocates for data subject rights in Ireland. The organisation supports data subjects by using all the tools available to ensure their fundamental right to protection of their personal data is respected.

About Adoption Rights Alliance

Adoption Rights Alliance (ARA) was established in 2009. The organisation advocates for equal human and civil rights for those affected by the Irish adoption system. ARA provides information, advocacy and practical advice to adopted people and natural parents, including a very active online peer support group which currently has 2,678 members.

About Justice for Magdalenes Research

Justice for Magdalenes (now JFMR) was established in 2003. The organisation provides information and support to the women who spent time in the Magdalene Laundries and their families. JFMR educates the general public by researching the Magdalene Laundries and related institutions.

Some sections of this Briefing Note are adapted from: Dr Maeve O'Rourke, *Birth Information and Tracing Bill 2022: An Analysis*. Available at: https://maeveorourke.medium.com/birth-information-and-tracing-bill-2022-an-analysis-e7705eb5ef7

We are extremely grateful to Prof James Smith of Justice for Magdalenes Research and Boston College for reading a draft of this briefing note.

A NOTE ABOUT LANGUAGE

Until recent years, most Irish adopted people referred to themselves as 'adopted people' or 'adoptees', while mothers who lost their children to adoption referred to themselves as 'mothers', 'natural mothers', 'first mothers' or 'birth mothers' (a term some mothers find offensive). The term 'survivor' has traditionally been used to refer to women who were incarcerated in Magdalene Laundries or people who were confined in industrial schools, County Homes or other institutions. However, in the years since the deaths of children at the Tuam Mother and Baby Home came to light, new language and terminology has developed around adoption in Ireland.

On 9th January 2015, in response to the Tuam revelations, the then Government published Terms of Reference for the Mother and Baby Homes Commission of Investigation. Adoption Rights Alliance (ARA) and Justice for Magdalenes Research (JFMR) were deeply concerned that the Commission's remit was limited to just fourteen Mother and Baby Homes (later, a sample of four County Homes was added). Amongst other issues, this resulted in the Commission not investigating all 182-plus entities involved with separating unmarried mothers and their children after the formation of the Irish State in 1922. Moreover, the adoption system which underpinned forced family separation in Ireland would not be addressed as part of the Commission's investigation. Critically, the Government's restrictive Terms of Reference reinforced a State-driven narrative that these injustices against women and children were solely **institutional**. That decision also marked the beginning of applying the language of institutional abuse to the issue of forced family separation in Ireland. From this point forward, official and non-official discourses rarely referred to 'adopted people' and 'mothers' and instead referenced 'survivors'—a collective term which is now often applied to people formerly boarded/nursed out or institutionalised in a Mother and Baby or County Home. However, not all adopted people or boarded/nursed out people were born in Mother and Baby Homes or County Homes. These institutions investigated by the Commission were merely one element of the system. Forced family separation abuses occurred both inside and outside institutional settings; social class and/or financial stability were no refuge.

Some adopted people identify as survivors, others do not. How a person identifies has no bearing on whether human rights violations occurred: closed secret adoption is abusive regardless of how affected people identify. We acknowledge that some people whose births were illegally registered do not identify as adopted people as no legal adoption took place. The Clann Project understands adoption not just as a legal construct, but also as a social

construct, where a child is raised in a social and family setting other than their family of origin. Thus, we refer to illegal birth registrations as illegal adoptions.

We respect the right of each adopted person and mother to identify as they see fit. In this briefing document, when discussing some of the provisions of the Bill we sometimes use the phrase ‘adopted people’ as a collective term to mean any person separated from their mother and raised in a different family setting, regardless of the circumstances. We use the Bill’s language regarding parents whose children were adopted: when we refer to a ‘parent’ we mean a person’s genetic parent.

Forced family separation is one of several areas where the State has compartmentalised people who have experienced human rights abuses by creating multi-tiered investigations, systems of redress, consultations, supports and terminologies. We warmly welcome the fact that many people affected by forced family separation have organised and become politically active. We stand in solidarity with all affected people and will continue our work to help achieve justice for every person, regardless of their circumstances. Nobody can be left behind.

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SUMMARY

WHAT'S WRONG WITH THE BIRTH INFORMATION AND TRACING BILL?

There is <u>no automatic access to birth certificates and no rights to all personal files</u> held by the State, religious orders and adoption agencies.

The Bill proposes that State officials will choose what sections of the file to release, which is in breach of affected people's rights to their personal data under the EU GDPR, rights enshrined under the EU Charter of Fundamental Rights and their rights under the Irish Constitution. There is no mechanism for mothers and relatives to access information unless the children in question died in certain institutions. This Bill discriminates against all those affected by forced family separation: adopted people, their parents and relatives.

We want the file, the whole file and nothing but the file

Before the release of birth certificates, some adopted people must attend a <u>mandatory information session</u> about their parents' privacy rights.

Over the past 17 years just 156 parents[1] have registered that they do not want contact with their adult children. Adopted people are singled out for discriminatory and offensive treatment in breach of their rights under EU law and their rights under the Irish Constitution.

No one should be left behind

The proposed system for releasing <u>limited information</u> is <u>in breach of EU law</u>, bewilderingly cumbersome, and in some cases involves numbers of different personnel across State agencies. <u>Tusla will be the sole agency</u> providing family tracing services unless a Minister directs otherwise.

If enacted, this system will be unnecessarily intrusive, will breach affected people's rights under EU law and will cause long delays. There is no mechanism to appeal decisions on the release of records or complain about poor service or discrimination.

We need transparency and accountability

[1] 57 of these parents are willing to share information with the adopted person.

WHAT CAN YOU LEARN FROM THIS BRIEFING NOTE?

Section 1 of this Briefing Note discusses birth certificates and 'birth information'. It outlines the statutory right enjoyed by members of the public (including adopted people) to inspect and obtain copies of birth certificates and other public records containing 'birth information'. This is in contrast to the proposed intrusive, discriminatory, and time-consuming system for adopted people to access their identities under this draft Bill.

In Section 2 we discuss the proposed mandatory Information Session that the Bill imposes on adopted people whose parents have registered a preference for no contact. The Information Session breaches adopted people's rights under EU law; furthermore, it undermines their rights under the Charter of Fundamental Rights. Moreover, as the Minister has failed to justify this restriction as required under the General Data Protection Regulation the Government must now respect the primacy of EU law. The Information Session is a paternalistic mechanism, particularly in light of the fact that the evidence shows most mothers support information rights for adopted people. Moreover, information and contact are not the same thing. Automatic access to birth certificates is fundamentally important to adopted people, our position on the Information session is non-negotiable.

In Section 3 we explain how a significant number of affected people are excluded from accessing records under the legislation, for example, most mothers, most relatives, many people who were adopted outside the State, certain people who were otherwise illegally adopted, people who were in non-adoptive 'care' settings, and people who were not in institutions listed in the *Schedule* attached to the Bill.

Section 4 further discusses access to records and how the Bill restricts affected people's rights under the GDPR and the EU Charter of Fundamental Rights. Instead of providing a clear means of accessing these rights, the Bill redefines people's personal data and exempts a large number of information sources and data controllers from their responsibilities to affected people. Despite the Government's claim to the European Commission that it is *'progressing new Health Regulations as a matter of priority, which will take account of the requirements of the GDPR'*, we demonstrate how the Government is still breaching its obligations under this proposed legislation in respect of the provision of medical information. The Bill also excludes access to administrative records.

In light of recent responses from TUSLA and the Adoption Authority to parliamentary questions, we have major concerns about the safety of thousands of records held by

these bodies. In particular, we are gravely concerned that TUSLA is not in command of its responsibility to safeguard records containing the personal data of affected people. We call for **an independent review** of the location, status and condition of all records held by TUSLA. This review should also include **an assessment of the Agency's capability to safeguard the records in its possession.**

Section 5 discusses the new Contact Preference Register, our concerns around the format and the operation of the register, and the critical need to ensure that the entries in the National Adoption Contact Preference Register are preserved.

In Section 6 we discuss the critical issue of transparency and accountability, including how the Minister has failed to meaningfully engage with affected people on the Bill, the importance of expertise provided by people with lived experience, and the urgent need for oversight of data controllers' implementation of GDPR rights.

In Section 7 we set out our concerns about TUSLA's involvement in the tracing service under the Bill.

Section 8 explains the importance of ensuring that the public information campaign is framed in positive terms.

In Section 9 we discuss our concerns about the counselling and 'support' provisions under the Bill.

Finally, in Section 10, we set out a number of amendments to other pieces of legislation, including the right to know you are adopted, the removal of the discrimination against adopted people in the *Status of Children Act 1987*, and the removal of the 'gagging orders' from the *Commissions of Investigation Act 2004* and the *Residential Institutions Redress Act 2002*.

At Appendix One we provide a redacted version of the list of 182 agencies, institutions and individuals that were involved in separating unmarried mothers and their children.

Our Committee Stage amendments are available at Appendix Two.

INTRODUCTION

Since 2001, the State has taken a prejudicial, discriminatory, and restrictive approach to the release to adopted people of their own personal information contained in files held by the State, religious orders and adoption agencies. Moreover, the needs of mothers and relatives to have access to their personal information and information about their relative have largely been ignored. The Birth (Information and Tracing) Bill 2022 is no different. Instead of providing adopted people with unconditional access to their birth certificates and records, the Bill imposes a mandatory and offensive Information Session on people whose parents have registered a no contact preference, and ignores the information rights of most mothers and relatives. **The people affected by Ireland's institutional and forced family separation system have been waiting decades for this legislation, but as written it will do more harm than good.**

Over many months during its pre-legislative scrutiny of the Bill, the Joint Oireachtas Committee on Children, Equality, Disability, Integration and Youth listened attentively to affected people who expressed their concerns. The Committee's report was published on 14th December 2021 and their careful consideration is reflected in the 83 recommended changes to the draft Bill, which were unanimously agreed by Committee members. When Minister for Children, Equality, Disability, Integration and Youth, Roderic O'Gorman published the Bill on 12th January 2022, just one Dáil working week had passed since the Committee's recommendations had been published. It is unsurprising therefore that the Bill as published ignores many of the Committee's key recommendations.

The Minister has continued to act in haste, scheduling Committee Stage of the Bill for 23rd February, just over a month (or twelve Dáil working days) since the Bill passed Second Stage. The Minister said in the Dáil that he is '*somewhat surprised'* that he is being criticised in this respect because *'Everybody has told us this legislation must be progressed quickly'*. On the contrary, the Clann Project and ARA have always made clear that **our primary goal is to achieve a non-discriminatory bill with unfettered access to birth certificates and records for all affected people.** We have consistently maintained that **no legislation is better than that enshrines discrimination.** In the same debate, the Minister added that he looks forward to *'passing [the Bill] rapidly through this House and the Seanad'*. Not unreasonably, affected people are fearful that the Government will guillotine future debates on the Bill.

If the Bill is allowed to pass with the discriminatory components intact, litigation in the Irish and European courts will be inevitable. Already, the Clann Project and Article Eight Advocacy have submitted a complaint to the European Commission; we have also written to the Irish Data Protection Commissioner urging her to intervene.

During the Second Stage debates on the Bill, the Minister argued that the Bill '*is landmark legislation…that…is part of our atoning for historical wrongs done to individuals and women in this country'*. According to the *Oxford Dictionary of English*, 'atonement' means *'the action of making amends for a wrong or injury'*.[2] However, the Minister has also repeatedly insisted that for thousands of people affected by forced family separation, this Bill is the **only** form of redress or 'atonement' that will be provided.[3] **The requirement for certain adopted people to attend a mandatory Information Session where the importance of privacy is explained to them does not represent atonement or 'redress'. Nor does the Bill's exclusion of most mothers and relatives from the right to personal and family information held in files in the custody of the State and religious orders.** Records are of paramount importance to adopted people, mothers, relatives, and others affected by the gross and systematic human rights abuses perpetrated in Ireland's institutional and family separation system. **However, as set out in this Briefing Note, this Bill as currently written falls far short of what is required for the proposed legislation to represent a true measure of justice for people affected by forced family separation in Ireland.**

Progress in this area has not been impeded by mothers. Neither are adopted people to blame.

The fact that affected people have been waiting so long for this legislation does not mean that they ought to accept anything less than what they deserve.

Affected people should not have to apologise for insisting that legislation that affects them does no further harm.

If this Bill as currently written is passed into law, it would be a devastating blow to adopted people. It would mean that in the eyes of the law of a country that has already let them down so often, adopted people are not capable of respecting the privacy of others.

If the Bill is passed unamended, it would also send a demoralising message to mothers and relatives that their information rights do not matter, and equally disturbingly, that the culture of secrecy and shame around adoption is alive and well.

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[2] Catherine Soanes and Angus Stevenson (2010) *Oxford Dictionary of English*. Oxford: Oxford University Press.

[3] E.g., when asked by Deputy Ivana Bacik if the forthcoming redress bill will provide for people not included within the scope of the Mother and Baby Homes Commission of Investigation, the Minister responded that '*the overwhelming priority need which has been expressed to me by people who, as children, were adopted or otherwise separated from their birth family, is access to records concerning their birth and early life information*'.

For adopted people whose identities were concealed from them and kinship ties severed, the restoration of their information rights through **unconditional access to birth certificates and records** is the very least the State can do in recognition of its ongoing breach of international human rights principles.

For mothers who were forced to relinquish their children, **unfettered access to records** is a fundamental cornerstone of redress.

For relatives forcibly separated from each other, **access to information and the ability to reunite** is a basic dignity that can no longer be ignored.

1. ACCESS TO BIRTH CERTIFICATES AND BIRTH INFORMATION

IN THIS SECTION:

1.1 The existing statutory right to inspect and obtain copies of public records
1.2 Adopted people can already obtain their birth certificates
1.3 Accessing birth certificates under the system proposed by the Bill
1.4 'Birth information' is public information
1.4.1 information contained in birth certificates
1.4.2 information contained in marriage certificates
1.4.3 information contained in death certificates

1.1 THE EXISTING STATUTORY RIGHT TO INSPECT AND OBTAIN COPIES OF PUBLIC RECORDS

In Ireland, birth certificates are public records; this means that members of the public (including adopted people) have a **statutory right** to inspect and obtain copies of the entries in the registers of births, deaths, and marriages. Since 1844 the General Register Office (GRO) has been **legally required** to provide a service facilitating public inspection of civil records.[4] Section 61 of the *Civil Registration Act 2004* provides all members of the public with the right to search the indexes to the birth, death and marriage registers and obtain a certified copy or a photocopy of an entry in the registers.

The Registers of Births reveal the identity of every child born and registered in Ireland and their mothers. The birth registers also contain the original identities of people who were adopted, save for those who were illegally registered and adopted people whose births were not registered.[5] Even though these records disclose adopted people's original identities and the identities of their mothers, the *Civil Registration Act 2004* sets out **no exceptions** regarding who can access the registers, **nor are there any restrictions imposed on the release of records under the Act. No person can be refused access to these records, even on privacy grounds**—Section 61 simply states that *'a person'* may make an application to search the indexes to the registers and obtain a copy of any entry. Moreover, before the *Civil Registration Act 2004* came into force, members of the public had a statutory right to inspect the full registration books and not just the indexes.[6] The only prerequisite to access the indexes to the registers and copies of entries under Section 61 is the payment of a

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[4] *Marriages (Ireland) Act 1844.* Birth registrations have been public records since 1864 when full civil registration began.

[5] See: https://www.irishexaminer.com/news/arid-20127795.html

[6] Before the *Civil Registration Act 2004* came into force, members of the public had a statutory right to inspect the full registration books and not just the indexes. Nonetheless, under the pre-2004 system, there were still no restrictions and exceptions. See the following sample page of births from St Patrick's Home on the Navan Road: http://clannproject.org/wp-content/uploads/Sample-Birth-Reg_Redacted.pdf (redactions carried out by Clann; research carried out by Judy Campbell).

fee. This is a universal requirement, and no person or group is singled out for discriminatory treatment.

In 2013, the *Civil Registration Act 2004* was amended, allowing the Department of Arts, Heritage and the Gaeltacht (DAHG) to make the indexes accessible online as part of the State's *National Genealogy Policy*. The differential treatment of adopted people is well illustrated by the fact that the State established a *National Genealogy Policy* in December 2012, two years and seven months before the Government attempted to legislate for the information rights of people affected by forced family separation.[7] Since 2014, the indexes to registers containing thousands of civil records have been available on the Government's *irishgenealogy.ie* website. Visitors from Ireland and abroad can use the site to download thousands of records free of charge. The only prerequisite to accessing the online records is a requirement for visitors to fill in their name (which can be any name) and to tick a box stating that the application to search the indexes is in line with Section 61 of the *Civil Registration Act 2004*.

When the system first went online on 3rd July 2014, **all** civil records were available. This meant that adopted people could easily use the system to ascertain their original identities. However, the records were subsequently taken down on 19th July. The withdrawal of the records came about because of an intervention from the office of the Data Protection Commission (DPC).[8] The DPC **did not step in because of a concern that adopted people might make use of the records**, but because of the potential for identity theft. In particular, the DPC was anxious to ascertain *'whether or not there was any harm caused (to any individual) by having such information up on the website'*. The DPC requested a report from the DAHG's technical team 'as to whether or not there was any bulk download of the information on the website'.[9] In its extensive (and often tense) communications with the DAHG, the DPC expressed **no concerns about adopted people having access to the records**. The system was eventually restored on the *irishgenealogy.ie* website, however, access to the online records was limited to births over 100 years, marriages over 75 years and deaths over 50 years. Members of the public can still visit the Research Room of the GRO to access **all paper records with no restrictions**.

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7 The General Scheme and Heads of an Adoption (Information and Tracing) Bill were published in July 2015 (and this transpired only on foot of public pressure in the aftermath of media coverage about the deaths of children at the Tuam Mother and Baby Home).

8 Source: Freedom of Information request, Department of Culture, Heritage and the Gaeltacht Ref: CHG-FOI-2020-0159. 22nd October 2020. Records available at: http://clannproject.org/wp-content/uploads/CHGFOI_irishgenealogy.ie_Redacted.pdf

9 Email from DPC to the Department of Arts, Heritage and the Gaeltacht. 18th July 2014; Email from DPC to the Department of Arts, Heritage and the Gaeltacht. 21st October 2014. Available at: http://clannproject.org/wp-content/uploads/CHGFOI_irishgenealogy.ie_Redacted.pdf

1.2 ADOPTED PEOPLE CAN ALREADY OBTAIN THEIR BIRTH CERTIFICATES

As outlined in the previous section, any person can apply to the GRO to automatically obtain a copy of their own, or anyone else's, birth certificate. Using guidelines provided by ARA and its predecessor organisations, since the early-1990s, many adopted people have availed of this route to obtain their birth certificate. Even if an adopted person does not know their name at birth, by retrieving all non-marital birth certificates on their date of birth, they can use a process of elimination to identify their own. Over the past thirty years, countless adopted people have made use of these methods to obtain their birth certificates. The sun has not fallen out of the sky as a result. Some adopted people upon obtaining their information seek out family members, others do not. There is no evidence to suggest that adopted people do anything other than respect family members' wishes when they decline contact requests. The fact that they are adopted does not cancel out adopted people's capacity for care and empathy. **Crucially, members of the public using the GRO's research services—including adopted people—do not have to attend compulsory meetings about privacy.**

1.3 ACCESSING BIRTH CERTIFICATES UNDER THE SYSTEM PROPOSED BY THE BILL[10]

Under the current draft Bill, people who are unaware of their existing right to retrieve any birth certificate automatically, or those who live abroad and cannot easily access the GRO, or people whose birth was not registered lawfully, or those who otherwise do not have enough information to use the existing GRO route, will have no choice but to use **a new, intrusive, discriminatory and drawn out procedure** to access their identity. The procedure set out in the Bill involves numerous agencies and individuals, and it forces a segment of the adoption community alone to attend a mandatory Information Session with a professional about the privacy rights of others (see Section 2).

The Bill proposes an extremely cumbersome process that will require the involvement of multiple agencies and will be costly, time consuming and opens up opportunities for errors.

The Bill states (in Sections 6 to 10 and 17) that when an adopted person, or a person formerly boarded/nursed out or institutionalised in a Mother and Baby or County Home institution, applies to the GRO for their birth certificate or to TUSLA or the Adoption Authority of Ireland (AAI) for their birth certificate or 'birth information' (see Section 1.4) the following procedure will be set in motion:

1. The GRO or TUSLA will alert the AAI that the person has requested their information. **Without agreeing to the procedure about to be described, or to the fact that the AAI will be notified, a person will not be entitled to retrieve their birth certificate or birth**

[10] Adapted from: Dr Maeve O'Rourke, *Birth Information and Tracing Bill 2022: An Analysis*. Available at: https://maeveorourke.medium.com/birth-information-and-tracing-bill-2022-an-analysis-e7705eb5ef7

information. See Section 2.3.6 which explains why this requirement for consent is in breach of the General Data Protection Regulation (GDPR).

2. Then, the AAI will undertake a process of ascertaining whether both of the person's parents are deceased or, if still alive, whether either parent has registered a preference not to receive contact from their adult child on the proposed new Contact Preference Register (CPR) which will replace the existing National Adoption Contact Preference Register (NACPR).

3. The AAI will subsequently inform the GRO or TUSLA of its findings. If a parent has registered a preference for no contact, the GRO or TUSLA will transfer the requesting person's contact details to the AAI whereupon the AAI will arrange for the person to undergo an 'Information Session' for the purpose of informing them of their entitlement to their information, of their parent's preference regarding contact, and of *'the importance of the relevant person respecting the privacy rights of the parent and the preference of the parent'*. (See Section 2 for a discussion of the Minister's Committee Stage amendment on the Information Session, which does not address our concerns.)

4. The AAI will then tell the GRO or TUSLA that the Information Session has taken place.

5. The GRO or TUSLA will only at that point arrange to send the person their birth certificate or birth information.

The Minister contends that the Bill provides *'guaranteed access to birth certificates'* and he has argued that under the legislation people *'can gain full and complete access to their birth and early life information, as defined in law, in all circumstances, with no redactions, refusals or exceptions'*. **The system described above does not do what the Minister claims. Nor does it constitute unconditional access to public birth certificates.** See our amendments to Sections 6, 7 and 8 of the Bill.

Please note: the Bill must make provision for an adopted person to obtain their birth certificate without delay. If for example, an adopted person has applied for both their birth certificate and records, they should not be forced to wait for the records to be located before their birth certificate is provided to them.[11]

1.4 'BIRTH INFORMATION' IS PUBLIC INFORMATION

For all adopted people, the information classified as 'birth information' under the Bill represents a crucial part of their history and identity at birth. For an adopted person whose birth certificate was illegally registered, the information classified as 'birth information' under the Bill is of even greater significance. The Bill defines 'birth information' as:

> *the following information relating to the person at the time of his or her birth:*

[11] Please note that we inadvertently omitted this issue from our amendments sent to TDs and we will submit an additional amendment in advance of Report Stage.

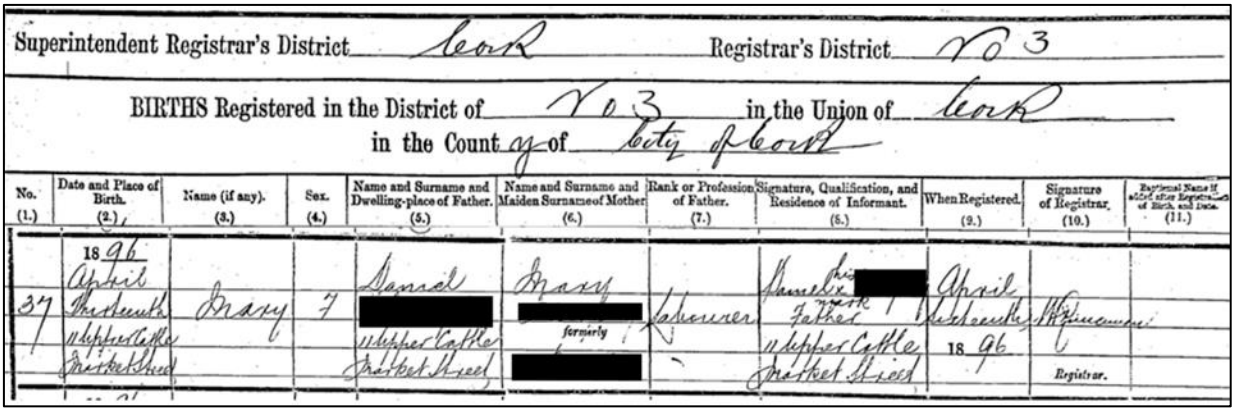
(a) *the date, place and time of his or her birth;*
(b) *his or her sex;*
(c) *his or her forename and surname;*
(d) *the forename, surname, birth surname, address, occupation, date of birth, civil status and, where applicable, former surname of his or her mother;*
(e) *the birth surname of his or her mother's mother;*
(f) *the forename, surname, birth surname, address, occupation, date of birth, civil status and, where applicable, former surname of his or her father;*
(g) *the birth surname of his or her father's mother.*

Most of the information under this definition is easily accessible through the public registers of births, deaths and marriages at the Research Room of the GRO. As explained above, over the past thirty years, countless adopted people have exercised their statutory right to search the indexes and obtain copies of the entries in the civil registers. Many have also made use of the civil records to conduct further genealogical research on their families of origin. Civil records are not likely to reveal an adopted person's parents' occupations at the time of their birth or an adopted person's father's name and details (but neither is this information always available in an adoption file, and where a name is recorded it is not always accurate). However, this information and other 'birth information' are often also available via other public records (e.g., electoral registers), through DNA matches obtained via commercial testing and through public family trees made available by family history researchers.

The examples provided below illustrate that most information classified as 'birth information' is already publicly available in the registers of births, deaths, and marriages. Once an adopted person has obtained their publicly available birth certificate, additional public records (including birth, death and marriage registrations) make available and accessible most of the forms of birth information outlined in the Bill. (All redactions have been carried out by the Clann Project.)

1.4.1 Information contained in birth certificates

As demonstrated in **Fig 1** below, a birth certificate provides a person's name, date of birth, place of birth, their mother and father's name, their father's occupation and the informant (sometimes the father). An adopted person who knows their mother's name (available via their own birth certificate) can use the Research Room at the GRO to obtain her birth certificate. An adopted person's mother's birth certificate will contain most of the information set out from (d) to (e) of the Bill's definition of birth information (see above). An adopted person's grandparents' birth certificates provide an even wider range of information than allowed for under the Bill's definition of 'birth information'. Furthermore, if an adopted person's mother went on to have further children, each of their birth certificates will show their father's name (if recorded) and their parent or parents' address at the time of each child's birth.



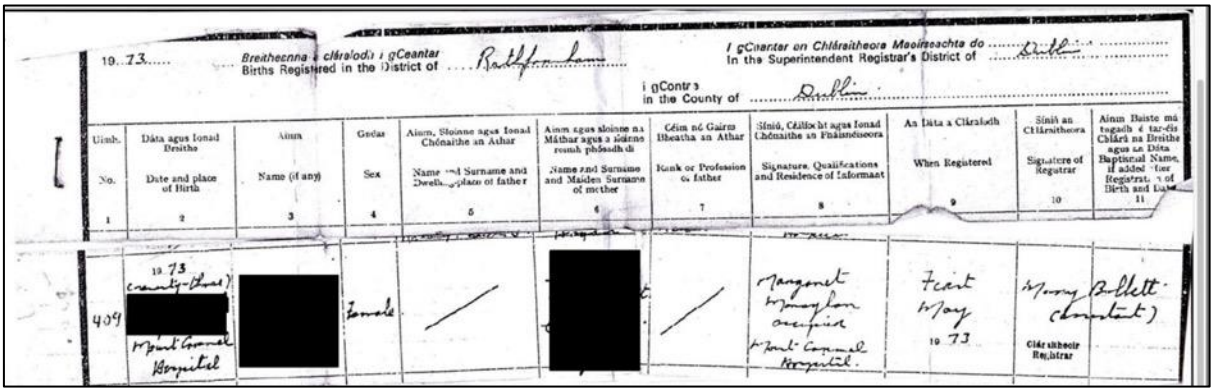
Superintendent Registrar's District Cork Registrar's District No 3

BIRTHS Registered in the District of No 3 in the Union of Cork in the County of City of Cork

No. (1.)	Date and Place of Birth. (2.)	Name (if any). (3.)	Sex. (4.)	Name and Surname and Dwelling-place of Father. (5.)	Name and Surname and Maiden Surname of Mother. (6.)	Rank or Profession of Father. (7.)	Signature, Qualification, and Residence of Informant. (8.)	When Registered. (9.)	Signature of Registrar. (10.)	Baptismal Name if added after Registration of Birth and Date. (11.)
37	18 96 April Thirteenth Upper Cattle Market Street	Mary	F	[redacted] Upper Cattle Market Street	[redacted] formerly	Labourer	Thomas his mark [redacted] Father Upper Cattle Market Street	April Thirteenth 18 96	Registrar.	

Fig 1: Sample of a (non-adopted person's) birth certificate

An adopted person's birth certificate contains considerably less information than that of a non-adopted person. For example, an adopted person's birth certificate generally does not have the name of the father, the father's occupation or the parents' address. See **Fig 2** below. Nonetheless, an adopted person's public birth certificate still discloses most of the information set out from (a) to (d) of the Bill's definition of birth information.



19 73 Breitheanna á clárú i gCeantar Births Registered in the District of Rathfarnham

I gCeantar an Chláraitheora Maoirseachta do Dublin In the Superintendent Registrar's District of Dublin

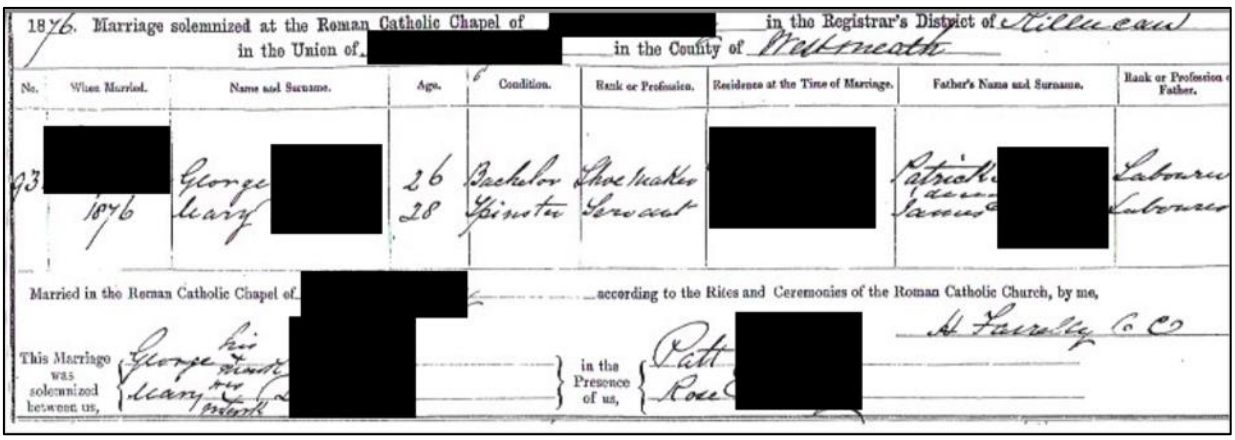
i gContae in the County of Dublin

Uimh. No. 1	Dáta agus Ionad Breithe Date and place of Birth 2	Ainm Name (if any) 3	Gnéas Sex 4	Ainm, Sloinne agus Ionad Chónaithe an Athair Name and Surname and Dwelling-place of father 5	Ainm agus sloinne na Máthar agus a sloinne roimh phósadh di Name and Surname and Maiden Surname of mother 6	Céim nó Gairm Bheatha an Athair Rank or Profession of father 7	Síniú, Cáilíocht agus Ionad Chónaithe an Fhaisnéisiúr Signature, Qualifications and Residence of Informant 8	An Dáta a Cláraíodh When Registered 9	Síniú an Chláraitheora Signature of Registrar 10	Ainm Baiste má tugadh é tar-éis Cláraithe na Breithe agus an Dáta Baptismal Name, if added after Registration of Birth and Date 11
409	19 73 (county-[illegible]) [redacted] Mount Carmel Hospital	[redacted]	Female	/	[redacted]	/	Margaret Brennan married Mount Carmel Hospital	First May 19 73	Mary Bellett (Assistant) Clár-sláinteoir Registrar	

Fig 2: Sample of an adopted person's birth certificate

1.4.2 Information contained in marriage certificates

As demonstrated in **Fig 3** below, public marriage certificates provide the couple's names, their address, sometimes their exact ages, their occupations, the names and occupations of the bride and groom's fathers, and the witnesses to their marriage (often close relatives). If an adopted person's mother went on to marry, her marriage certificate will disclose most if not more of the information set out at (d) and (e) of the Bill's definition of birth information. An adopted person's grandparents' marriage certificate will provide even more information. If the adopted person has obtained information about their genetic relatives through commercial DNA services, they can use the surnames of relatives and publicly available family trees to also ascertain the information set out at (f) and (g) of the Bill's definition of birth information.



1876. Marriage solemnized at the Roman Catholic Chapel of [redacted] in the Registrar's District of Millicent
in the Union of [redacted] in the County of Westmeath

No.	When Married.	Name and Surname.	Age.	Condition.	Rank or Profession.	Residence at the Time of Marriage.	Father's Name and Surname.	Rank or Profession of Father.
93	[redacted] 1876	George [redacted] Mary	26 28	Bachelor Spinster	Shoemaker Servant	[redacted]	Patrick [redacted] James	Labourer Labourer

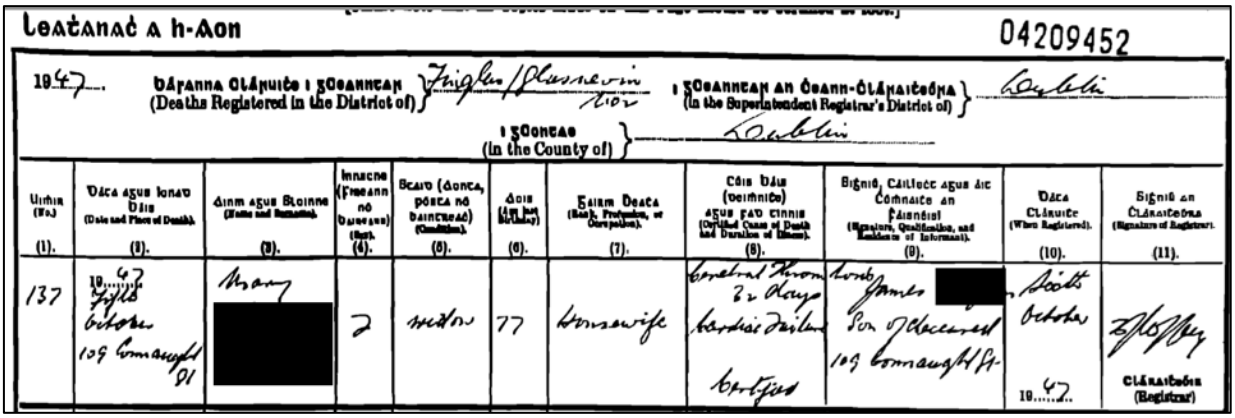
Married in the Roman Catholic Chapel of [redacted] according to the Rites and Ceremonies of the Roman Catholic Church, by me, A Farrelly C.C.

This Marriage was solemnized between us, George his mark [redacted] Mary her mark [redacted] in the Presence of us, Patt [redacted] Rose [redacted]

Fig 3: Sample of a marriage certificate

1.4.3 Information contained in death certificates

As illustrated by **Fig 4**, a person's death certificate discloses arguably more personal information about them than other public certificates. These documents reveal a person's name, age, marital status, occupation, place of death and the informant who registered their death, often a close relative. A death certificate also reveals a person's cause of death, which is deeply personal information. (If the person's death was the subject of an inquest, the report of that inquest is also a public record.)



Leaṫanaċ a h-Aon 04209452

1947. Dáfanna Cláruiṫe i gCeannaṫan (Deaths Registered in the District of) Frigher Glasnevin Rior i gCeannaṫan an Ċeann-Cláraiṫeóra (in the Superintendent Registrar's District of) Dublin
i gContae (in the County of) Dublin

Uimhir (No.) (1).	Dáta agus Ionad Dáis (Date and Place of Death). (2).	Ainm agus Sloinne (Name and Surname). (3).	Innsiṫe (Fireann nó Baineann) (Sex). (4).	Scaiḋ (Aonta, pósta nó baintreach) (Condition). (5).	Aois (Age last Birthday) (6).	Saothar Deaṫa (Rank, Profession, or Occupation). (7).	Cúis Dáis (Veimniṫe) agus Fad Tinnis (Certified Cause of Death and Duration of Illness). (8).	Sighniú, Cáiliúċ agus Áit Cónaiṫe an Faisnéisí (Signature, Qualification, and Residence of Informant). (9).	Dáta Cláruiṫe (When Registered). (10).	Sighniú an Cláraiṫeóra (Signature of Registrar). (11).
137	1947 Fhiḋ Oktober 109 Connaught St	Mary [redacted]	2	widow	77	Housewife	Cerebral Thrombosis 2 days Certified	Thomas [redacted] Son of deceased 109 Connaught St	Sixth October 1947	Cláraiṫeóir (Registrar)

Fig 4: Sample of a death certificate

The above examples demonstrate that adopted people can already use the civil registration system and other data that is publicly available to easily procure information about themselves and their families of origin. As set out in Section 1.3 above and Section 2 below, under the proposed Birth (Information and Tracing) Bill, before accessing this same publicly available information, certain adopted people will have to attend a mandatory Information Session on privacy. This constitutes a discriminatory action that, if passed, this legislation will provide a statutory basis for. See our amendments to Sections 9 and 10 of the Bill.

2. THE MANDATORY INFORMATION SESSION

IN THIS SECTION:

2.1 The purpose of the Information Session
2.2 Birth certificates and birth information are adopted people's personal data
2.3 Breaches of adopted people's rights under EU law
2.3.1 The Information Session is neither necessary nor proportionate
2.3.2 Undermining of rights enshrined in the charter of fundamental rights
2.3.3 Balancing exercises: conflation and confusion
2.3.4 Primacy of EU law
2.3.5 Breach of entitlement to easily exercise the right to access personal data
2.3.6 Compelled consent
2.3.7 Format of request for birth certificate or birth information
2.4 A paternalistic mechanism?
2.5 Most mothers support information rights for adopted people
2.6 Information versus contact
2.7 Why is automatic access to birth certificates so important?
2.8 The Information Session is still discriminatory, unnecessary and offensive
2.9 Information meeting for adopted people aged under eighteen

The Bill stipulates that adopted people (and adopted people only) who have applied for their birth certificate or 'birth information' but whose parents have registered a 'no contact' preference must attend a mandatory Information Session, which is set out under Section 17. The Minister and his department originally envisaged that the Information Session would take place in person and that it would be conducted by a social worker. These provisions have now been removed and the Information Session will be conducted by a 'designated person' employed by the AAI or TUSLA and the meeting does not have to take place in person. The Minister asserts that he has made these changes *'having heard'* the *'strong views' 'expressed at prelegislative scrutiny'*. The Minister may have *'heard'* the views expressed, **but he has not listened**, either to the strong objections expressed by adopted people or to the Children's Committee's 83 recommendations.

The Minister has merely changed the **format** of the Information Session, not the **intent**. It remains a discriminatory measure that is in breach of the equal rights and freedoms of adopted people.

The Minister's Committee Stage amendments

The Minister submitted just three substantive amendments to be debated at Committee Stage of the Bill, one of which concerns the mandatory Information Session. Our discussion below includes an analysis of the Minister's amendment to Section 17 of the Bill, which does not address our concerns.

For the reasons set out in this Section, our position on the mandatory Information Session is not negotiable—it must be removed. If the Minister and his Department ignore our

concerns, further complaints to the Data Protection Commission, the European Commission and litigation in Irish and European courts are inevitable.

2.1 THE PURPOSE OF THE INFORMATION SESSION

The proposed Information Session affects adopted people who have applied for their birth certificate or 'birth information' and whose parents have registered a 'no contact' preference. The mandatory Information Session will be 'held between the relevant person and a designated person' employed by TUSLA or the AAI. (A 'relevant person' is a person who was adopted or formerly boarded/nursed out or institutionalised in a Mother and Baby Home or a County Home.) According to Section 17(2) of the Bill, the purpose of the Information Session is to inform the relevant person of:

> (a) *the entitlement of the relevant person to obtain, in accordance with this Act, his or her birth certificate, or birth information relating to him or her, as the case may be,*
> (b) *the fact that the parent concerned has stated, in accordance with this Act, that he or she is not willing to be contacted by the relevant person, and*
> (c) *the importance of the relevant person respecting the privacy rights of the parent and the preference of the parent referred to in paragraph (b).*

The Minister's Committee Stage amendment deletes subsections (b) and (c) and replaces them with a new subsection (b). If the amendment passes, Section 17(2) will read as follows:

> *For the purposes of this Act, an information session is a session held between the relevant person and a designated person, at which the designated person informs the relevant person of—*
> (a) *the entitlement of the relevant person to obtain, in accordance with this Act, his or her birth certificate, or birth information relating to him or her, as the case may be,*
> (b) *the fact that—*
> (i) *the parent concerned has exercised his or her entitlement under section 38(11) to state that he or she is not willing to be contacted by the relevant person, and*
> (ii) *the making of that statement by the parent constitutes an exercise by him or her of his or her right to privacy.*

In either version, subsection (a) is entirely unnecessary since the person applying for their birth certificate or birth information will already know they are entitled to apply for these records under the legislation. Moreover, other adopted people, whose parents do not express a preference for no contact, do not have to be so informed of their entitlements. Subsection (b) (or (b)(i) in the Minister's amended version) is also unnecessary since (as envisaged under the Bill) the fact that the person has been summoned to an Information Session will already have indicated to them that one or both of their parents do not wish to have contact. Therefore, subsections (a) and (b)/(b)(i) act as a thin veil covering the sole purpose of the Information Session, as set out in subsection (c) (or (b)(ii) in the Minister's amended version): **To explain to adopted people the importance of respecting**

their parents' privacy, or if the Minister's amendment carries, **to (unnecessarily) explain to adopted people that their parent has exercised their right to privacy.**

Moreover, in their amendment to Section 17, the Minister and his Department have misinterpreted how the right to privacy works. A person can allege a breach of the right to privacy and exercise their right to that privacy by taking the matter to court. Similar to the right to non-discrimination, the right to privacy is an inherent right which does not need to be invoked and an action does not need to be taken in order to engage it.

As we set out in the discussion below, the Information Session remains an offensive, discriminatory mechanism which is in breach of EU law, regardless of whether or not the Minister's amendment passes at Committee Stage.

No other subgroup in society are made to endure such State interference in their legal entitlements, and thus this is a discriminatory action which the Bill, if passed, will provide a statutory basis for. See our amendments to Sections 6, 7, 8, 9, 10 and 17 of the Bill.

2.2 BIRTH CERTIFICATES AND BIRTH INFORMATION ARE ADOPTED PEOPLE'S PERSONAL DATA

GDPR Article 4.1 defines personal data as:

> *any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person*

To be clear: birth certificates and birth information are the personal data of an adopted person. The Department has acknowledged this in Section 2.1.3 of its Data Protection Impact Assessment (DPIA):

> *The Department is satisfied that all information on a birth certificate is the personal data of the person whose birth has been registered, as well as some of the data constituting personal data of the mother and father.*

As discussed in greater detail in Section 4.1, under EU law, affected people have a right to access their personal data. As set out in the next section, the Minister and his Department have ignored the primacy of EU law and as a result, the Bill places an impermissible precondition on adopted people's fundamental Right of Access to their personal data.

2.3 BREACHES OF ADOPTED PEOPLE'S RIGHTS UNDER EU LAW

The Charter of Fundamental Rights of the European Union (the Charter of Fundamental Rights) provides robust protection for the fundamental rights of adopted people and others affected by forced family separation. The European Commission (EC) describes the Charter as follows:

> *The EU Charter of Fundamental Rights is a powerful tool used to protect, promote and further strengthen peoples' rights in the European Union. Fundamental rights do not only protect people from undue interferences…they also empower people to make full use of their rights and opportunities in life…The more people know about the rights guaranteed in the Charter and how to rely on them, the more powerful they become….**Any restrictions to fundamental rights must be necessary and proportionate. This is required by the EU Charter of Fundamental Rights, which is binding EU law.** It protects and promotes a broad range of rights linked to human dignity, freedom, equality and solidarity, **and all national courts can apply it in cases where EU law is implemented and relevant for the final judgment.***

The EC also states that:

> *When Member States adopt or change laws on a matter where EU law imposes concrete obligations, **their laws may not contravene EU law**, including the Charter, because such legislative action would constitute implementation of EU law.*

Birth certificates are personal data and EU law imposes 'concrete obligations' on the Irish State in respect of data protection. As explained in this section, the State is ignoring those obligations in this Bill, because the Information Session does contravene EU law. (Further breaches are set out in Section 4.)

2.3.1 The Information Session is neither necessary nor proportionate

The Minister asserts that for the Bill to be constitutional the Information Session must remain in the legislation. However, as discussed the previous section, and as acknowledged by the Department in its DPIA, **birth certificates and birth information are an adopted person's personal data.** Under EU law, adopted people have a Right of Access to their personal data,[12] and they have an entitlement to easily exercise that right.[13] Moreover, adopted people have a **separate, distinct fundamental right to access their personal data** under Article 8(2) of the Charter of Fundamental Rights.[14]

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[12] Article 15.1 of the EU GDPR states that a '*data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where that is the case, **access to the personal data'**.*

[13] Recital 63 of the GDPR states that: *'A data subject should have the right of access to personal data which have been collected concerning him or her, and **to exercise that right easily**'*.

[14] Article 8(2) states that everyone has *'the right of access to data which has been collected concerning him or her, and the right to have it rectified'*

The Information Session places an extreme restriction on adopted people's right to access their personal data. **If the Minister and his Department wish to impose a restriction in the form of a mandatory phone call before a person can exercise a fundamental right, then they are obliged to justify it in accordance with EU law.** GDPR Article 23 states that any restriction on the rights of data subjects or on data controllers' obligations must respect *'the essence of the fundamental rights and freedoms'* of individuals and it must be *'a necessary and proportionate measure'*. The Minister regards the Information Session as a safeguard to mitigate a possible risk to a parent's privacy rights; **however, he has not carried out an assessment of the necessity and proportionality of this measure as required under GDPR Article 23.**

The European Data Protection Board's[15] (EDPB) *Guidelines 10/2020 on Restrictions under Article 23 GDPR* state at paragraph 3 that restrictions '*should be seen as* ***exceptions to the general rule of allowing the exercise of rights and observing the obligations enshrined in the GDPR.***' At paragraph 14, the EDPB stresses that:

> *One of the main objectives of data protection law is to* ***enhance data subjects' control*** *over personal data concerning them.* ***Any restriction shall respect the essence of the right that is being restricted. This means that restrictions that are extensive and intrusive to the extent that they void a fundamental right of its basic content, cannot be justified.***

The Information Session does not *'respect the essence'* of an adopted person's right to access their personal data, particularly when the public nature of birth certificates and birth information are taken into account. The Information Session is an *'extensive and intrusive'* restriction '*to the extent that [it] void[s] a fundamental right of its basic content'.* It is *'extensive'*, in that it potentially affects all adopted people who apply for their birth certificate or birth information, depending on their parents' contact preferences, if any. As explained in Section 1.3 and as set out under Sections 6 to 10 and 17 of the Bill, the Information Session is also a deeply *'intrusive'* restriction involving numerous agencies and individuals that the Government has deemed necessary so that an adopted person can obtain information which is available in public records. Therefore, as stated in the EDPB *Guidelines,* the Information Session '***cannot be justified'.*** Also in paragraph 14, the EDPB confirms that:

> *In any case,* ***a general exclusion of all data subjects' rights*** *with regard to all data processing operations* ***as well as a general limitation of the rights mentioned in Article 23 GDPR*** *of all data subjects for specific data processing operations or with regard to specific controllers* ***would not respect the essence of the fundamental right to the protection of***

[15] *'The European Data Protection Board (EDPB) is an independent European body, which contributes to the consistent application of data protection rules throughout the European Union, and promotes cooperation between the EU's data protection authorities. The EDPB is established by the General Data Protection Regulation (GDPR), and is based in Brussels. The EDPB is composed of representatives of the EU national data protection authorities and the European Data Protection Supervisor (EDPS)'.* Source: https://edpb.europa.eu/about-edpb/about-edpb/who-we-are_en

> ***personal data, as enshrined in the Charter. If the essence of the right is compromised, the restriction shall be considered unlawful, without the need to further assess whether it serves an objective of general interest or satisfies the necessity and proportionality criteria.*** (para 14)

The Information Session is a *'general exclusion'* of the rights of adopted people to their personal data and it does not '*respect the essence of the fundamental right to the protection of personal data'.* Therefore, as set out in the EDPB *Guidelines*, **the Information Session is an unlawful restriction.**

At paragraph 38, the EDPB *Guidelines* also state that:

> ***Restrictions are only lawful when they are a necessary and proportionate measure*** *in a democratic society, as stated in Article 23(1) GDPR. This means that restrictions need to pass a necessity and proportionality test in order to be compliant with the GDPR.*

The EDPB *Guidelines* further explain that:

> *A proposed restriction measure* ***should be supported by evidence describing the problem to be addressed by that measure, how it will be addressed by it, and why existing or less intrusive measures cannot sufficiently address it.*** *There is also a requirement to demonstrate how any proposed interference or restriction genuinely meet objectives of general interest of the State and EU or the need to protect the rights and freedoms of others. The restriction of data protection rights will need to focus on specific risks.* (para 43)

The Department has not conducted a necessity and proportionality assessment in relation to this restriction. In a 'Risk Assessment' contained in its DPIA, one type of risk is labelled as 'legal'. Under the 'Risk Description' for this category the Department alleges that:

> *Relevant bodies are unable to completely guarantee that the release of mothers', fathers' and carers' names will not cause an adverse impact on those data subjects and the legislation is subject to legal action.*

In a column entitled *'Actions / Controls / Mitigations in place (provide details of how you currently manage the risk'*, the Department provides the following information:

> *Information campaign to inform mothers, fathers and others of the change in the law.*
> *Information session with relevant person is a key mechanism to balance the privacy right*
> *Support (including counselling available to mothers and fathers)*

The 'Risk Assessment' is not a necessity test, nor does it meet the standard set by the EDPB *Guidelines*. **The Department has not provided any '*evidence describing the problem'*** (i.e., proof that mothers' privacy will be breached by the release of a public document) **or of how that alleged problem '*will be addressed by*' the Information Session, and it has made no effort to**

demonstrate '*why existing or less intrusive measures cannot sufficiently address it*'. For example, the Department has ignored the fact that protections against harassment already exist in law and offer protection from unwanted contact. (Moreover, there is no evidence of any legal cases resulting from adopted people contacting their parents or other family members.)

The EDPB *Guidelines* make clear at paragraph 39 that:

> *The case law of the CJEU applies* ***a strict necessity test*** *for any limitations on the exercise of the rights to personal data protection and respect for private life with regard to the processing of personal data: 'derogations and limitations in relation to the protection of personal data (...) must apply* ***only insofar as is strictly necessary***.[16]

The DPC also states in its Article 23 guidance that: *'Consideration should be given to completing a Necessity Test via a DPIA, in circumstances where the proposed restriction could represent a high risk to the fundamental rights of individuals'*.[17]

The Department has not conducted a Necessity Test via its DPIA. Instead, Section 2.3.3 of the Department's DPIA describes the Information Session as *'an important mechanism in terms of recognising and balancing the relevant person's right to their identity information with the parent's right to privacy'*. Section 3.1 asserts that: *'The Department has worked intensively with the Office of the Attorney General and is satisfied that the balancing of rights within the proposed legislation is necessary and proportionate having regard to the importance of vindicating a person's fundamental right to their identity'*. **An assertion of necessity and proportionality is not an assessment of necessity and proportionality.**

2.3.2 Undermining of rights enshrined in the Charter of Fundamental Rights

The EDPB *Guidelines* emphasise at paragraph 42 that GDPR Article 23 cannot be used to undermine the respect for private life or any other rights enshrined in the *Charter of Fundamental Rights*:

> ***According to the proportionality principle, the content of the legislative measure cannot exceed what is strictly necessary to safeguard the objectives listed in Article 23(1)(a) to (j) GDPR.*** *The general public interest of the restriction must therefore be appropriate for attaining the legitimate objectives pursued by the legislation at issue and not exceed the limits of what is appropriate and necessary in order to achieve those objectives.* ***According to the CJEU case law, Article 23 GDPR cannot be interpreted as being capable of conferring on Member States the power to undermine respect for private life, disregarding Article 7 of the Charter, or any of the other guarantees enshrined therein.*** *In particular, the power*

[16] CJEU, judgment of 16 December 2008, case C-73/07, Tietosuojavaltuutettu v. Satakunnan Markkinapörssi Oy and Satamedia Oy, ECLI:EU:C:2008:727, paragraph 56.

[17] DPC, 'Limiting Data Subject Rights and the Application of Article 23 of the GDPR', page 4

> *conferred on Member States by Article 23(1) GDPR may be exercised only in accordance with the requirement of proportionality, according to which derogations and limitations in relation to the protection of personal data must apply only in so far as is strictly necessary.*

Given that safeguards against unwanted contact already exist in law, and given that birth certificates and birth information are public records, the Information Session **far exceeds what is strictly necessary.** The Information Session also undermines several fundamental rights. **It interferes with an adopted person's Article 7 right to respect for their private life**, in the sense that it creates a stigma regarding the adopted person's wish to know their identity and perpetuates a harmful stereotype that an adopted person is not capable of respecting another person's privacy in the way as their parent(s) and other members of society are presumed to be. The right to respect for an adopted person's private life is further inhibited in the compelled consent associated with the Information Session as set out in Sections 6(3)(c) and 9 (2)(c) of the Bill. These sections require an adopted person to provide consent for their contact details to be provided to the AAI so that the Authority can ascertain whether an Information Session is necessary. **It obstructs adopted people's Article 8 right to have their data processed fairly and the right of access to that data.** Moreover, in requiring certain adopted people (and adopted people only) to attend the Information Session, **the Bill breaches adopted people's Article 21 right to non-discrimination based on the circumstances of their birth.**

2.3.3 Balancing exercises: conflation and confusion

In drafting this legislation, the Government has confused two separate balancing exercises: 1) the balance between the right to privacy and the right to identity (**Balancing Exercise 1**), and 2) the balancing test a data controller has to carry out under GDPR Article 15.4 (**Balancing Exercise 2**), which stipulates that the right to access one's personal data '*shall not adversely affect the rights and freedoms of others*'. The confusion is evidenced in the Department's *Regulatory Impact Analysis* (RIA), which argues that:

> *There are two rights which must be considered when advancing legislative proposals; 1) the right to privacy and 2) the right to identity. In the context of GDPR these rights are the right to access personal information and that the release of personal information shall not adversely impact the rights and freedom of others.*

These balancing exercises are distinct from each other, but the Department has conflated the two. The Minister has stated that the Government is *'rebalancing two sets of competing EU and constitutional rights in a way that does not limit the information that can be provided to somebody using the legislation, while still acknowledging the privacy rights of mothers'* (i.e., Balancing Exercise 1). However, the Government's attempt to 'rebalance' rights through the Information Session **introduces an intrusive and unexplained restriction on an adopted person's right to access their personal data and several other fundamental rights**. The Oireachtas, in debating and

enacting this Bill, decides on the balance to be struck between the right to identity and the right to privacy, and other competing and engaged rights such as the right to access personal data and the right to non-discrimination. This balance will then inform and in most cases obviate the need for the balancing test in Article 15.4 GDPR, which is the responsibility of individual data controllers.

Regarding the balancing of the right to identity with the right to privacy (Balancing Exercise 1), the Department's DPIA acknowledges that: *'The European Court of Human Rights has recognised the right to obtain information in order to discover one's origins and the identity of one's parents as an integral part of identity protected under the right to private and family life enshrined in Article 8 of the Convention of Human Rights'.* Citing Odièvre v. France [2003] and Gaskin v. the United Kingdom [1989] the Department further argues that *'it is a State's right to exercise its own mandate in how that balance of rights between privacy and knowing one's origins should be struck'*. Here it is crucial to note that the adopted person in the Odièvre v. France case was born under a regime that allowed anonymous births. In this instance the court held that France had struck a fair balance between the competing rights of identity and anonymity and upheld a decision to withhold information from the person. **However, in Ireland, there are no anonymous births because all civil records are public. Moreover, as outlined in Section 2.5, most mothers affected by forced family separation in Ireland do not wish to prevent their adult children from accessing information**.

Importantly, in February 2020 the Court of Appeal decided in *Habte v Minister for Justice and Equality* [2020] IECA 22 that there is an unenumerated Constitutional right *'to have [one's] identity correctly recognised by the State'*. **This judgment strengthens immeasurably the power of the Oireachtas to legislate to ensure unfettered access to birth certificates.** Mr Justice Murray explained (at para 31):

> *The trial Judge rooted this conclusion, in part, in the widespread recognition of the right in international instruments (Article 24(2) of the International Covenant on Civil and Political Rights, and Article 7 of the Convention on the Rights of the Child) and the view that this right both necessarily inhered in Article 8 of the European Convention on Human Rights and was a corollary to the right to protection of data provided for in Article 8 of the Charter on Fundamental Rights of the European Union (in which connection the Judge further referred to section 74(3) of the Data Protection Act 2018 and section 9 of the Freedom of Information Act 2014). He said (at para. 44):*
>
> > *…there is an implied constitutional onus on the State arising from the inherent dignity of the individual referred to in the Preamble and the personal rights of the citizen in Article 40.3 of the Constitution to accurately record and represent central aspects of personal identity.*

Moreover, as explained in this Legal Opinion by Professor Conor O'Mahony, Dr Fred Logue, Dr Maeve O'Rourke, Dr James Gallen, Dr Eoin Daly, Reader Máiréad Enright, Dr Sinéad Ring, Rossa McMahon (solicitor) and Dr Laura Cahillane, the outdated decision in *IO'T v B* [1998] 2 IR 321 creates no barrier to the Oireachtas legislating to provide automatic access to birth certificates. *IO'T v B* was decided in a legislative vacuum, did not address the issue of access to publicly available birth certificates, and does not affect the position expressed by the Supreme Court in *Fleming v Ireland* [2013] 2 IR 417 that legislation *'concerned with the implementation of public policy in respect of sensitive matters of social or moral policy'* will attract a particularly strong presumption of constitutionality. The Legal Opinion concludes that a proportionate way of balancing the rights of adopted people and their parents would be to properly resource the voluntary National Adoption Contact Preference Register (NACPR) while providing personal data access so that all relatives are enabled to manage their own family relationships without unnecessary and arbitrary State coercion.

In terms of the balancing test a data controller must carry out under GDPR Article 15.4 (Balancing Exercise 2), Recital 63 of the GDPR states that the Right to Access *'should not adversely affect the rights or freedoms of others'.* Crucially however, the Recital goes on to say that *'the result of those considerations should not be a refusal to provide all information to the data subject'.* Birth certificates and birth information fall under a category known as 'mixed personal data', i.e., data that is shared by others. Because birth certificates and birth information reveal the name of an adopted person's mother, this information is also the mother's personal data. Data controllers in this area have an extremely poor record and frequently misunderstand that mixed personal data **is** a person's personal data. (For a more in-depth discussion see Section 6.4.) Importantly, **EU case law has held that mixed personal data should be released to data subjects.** In Nowak v Data Protection Commissioner of Ireland (Case C434/16, 20 December 2017) the Court of Justice of the European Union (CJEU) recognised that information may be linked to more than one individual, but this does not affect the right of access:

> *The same information may relate to a number of individuals and may constitute for each of them, provided that those persons are identified or identifiable, personal data*. (para 45)

In the same case the CJEU acknowledged that:

> *The use of the expression **'any information'** in the definition of the concept of 'personal data', within Article 2(a) of Directive 95/46, reflects the aim of the EU legislature to assign a **wide scope** to that concept, which is **not restricted to information that is sensitive or private**, but potentially encompasses all kinds of information, not only objective but also subjective, in the form of opinions and assessments, provided that it 'relates' to the data subject.* (para 34)

The EDPB *Guidelines 01/2022 on Data Subject Rights - Right of Access* state that:

> *The general concern that rights and freedoms of others might be affected by complying with the request for access, is not enough to rely on Art. 15 (4) GDPR. In fact the controller must be able to demonstrate that in the concrete situation rights or freedoms of others would factually be impacted.*

Moreover, as demonstrated in Section 1.1 and Section 1.4, birth certificates and birth information are public records. Furthermore, as explained in Section 1.2, adopted people have been accessing their birth certificates over the past three decades. Some adopted people upon obtaining their information discreetly seek out family members, others do not. There is no evidence to suggest that adopted people do anything other than respect family members' wishes when they decline contact requests.

2.3.4 Primacy of EU law

As explained in Section 2.3.1, for the Information Session to be lawful, the Minister and his Department must demonstrate the necessity and proportionality of this measure in accordance with GDPR Article 23 and the EDPB guidelines. The Minister and his Department have not carried out any such assessments to justify the restrictions they wish to impose. EU law has primacy over Irish domestic law and therefore adopted people's GDPR rights to their personal data, including their birth certificates and birth information, must prevail. As provided in the *Third Amendment of the Constitution Act 1972*, the Constitution of Ireland recognises that **EU law is superior to all national law, including the Constitution itself:**

> *No provision of this Constitution invalidates laws enacted, acts done or measures adopted by the State necessitated by the obligations of membership of the Communities or prevents laws enacted, acts done or measures adopted by the Communities, or institutions thereof, from having the force of law in the State.*

It has long been established that EU law has primacy over domestic law. The Minister (eventually) acknowledged this in 2021 in correspondence with Deputy Thomas Pringle:

> *While Irish law must be interpreted in line with EU law to the extent that it is possible to do so, in case of conflict, EU law would prevail over any inconsistent domestic law in accordance with the principle of primacy of EU law.*

Critically, where there is a divergence between a national law and an EU law, EU States must directly disapply the national law.[18] For the avoidance of doubt, in the case of Minister for Justice

[18] See also: https://www.mcgarrsolicitors.ie/2021/06/11/sample-letter-in-response-to-dept-of-children-refusal-to-provide-health-data-in-response-to-mother-and-baby-home-survivor-data-subject-access-request/

and Equality, Commissioner of An Garda Síochána v Workplace Relations Commission (Case C-378/17) the CJEU stated at paragraph 38:

> *As the Court has repeatedly held, that duty to disapply national legislation that is contrary to EU law is owed not only by national courts, but also by all organs of the State — including administrative authorities — called upon, within the exercise of their respective powers, to apply EU law (see, to that effect, judgments of 22 June 1989, Costanzo, 103/88, EU:C:1989:256, paragraph 31; of 9 September 2003, CIF, C-198/01, EU:C:2003:430, paragraph 49; of 12 January 2010, Petersen, C-341/08, EU:C:2010:4, paragraph 80; and of 14 September 2017, The Trustees of the BT Pension Scheme, C-628/15, EU:C:2017:687, paragraph 54)*.

At paragraph 50 the CJEU stated that:

> *It follows from the principle of primacy of EU law, as interpreted by the Court in the case-law referred to in paragraphs 35 to 38 of the present judgment, that bodies called upon, within the exercise of their respective powers, to apply EU law are obliged to adopt all the measures necessary to ensure that EU law is fully effective, disapplying if need be any national provisions or national case-law that are contrary to EU law. This means that those bodies, in order to ensure that EU law is fully effective, must neither request nor await the prior setting aside of such a provision or such case-law by legislative or other constitutional means.*

2.3.5 Breach of Entitlement to Easily Exercise the Right to Access Personal Data

Recital 63 of the GDPR states that: *'A data subject should have the right of access to personal data which have been collected concerning him or her,* ***and to exercise that right easily'***. The same recital also states that the Right to Access personal data *'should not adversely affect the rights or freedoms of others'* but that such considerations *'should not be a refusal to provide all information to the data subject'*. **The Department's Information Session sets an impermissible pre-condition which must be met before a fundamental right can be exercised**. It is a considerable distance from allowing individuals *'to exercise that right easily'* as stipulated under GDPR, Recital 63. Moreover, as explained in Section 1.3 the process leading up to the Information Session itself is lengthy, intrusive and entirely unnecessary.

2.3.6 Compelled consent

Sections 6(3)(c) and 9 (2)(c) state that where an adopted person applies for their birth certificate or birth information the application must be accompanied by written consent allowing the relevant body to provide the person's contact details to the AAI so that the Authority can ascertain the contact preferences of the person's parents. These sections attempt to use consent as a lawful basis for processing personal data and make the exercise of the Right of Access contingent on this consent being given. This is not an appropriate lawful basis for a public authority to use to process personal data. Nor is it valid consent as set out in GDPR Article 7. Perplexingly, consent in these Sections is

not defined. The Bill accepts the GDPR definition of consent only in relation to Sections 38 and 39, set out in Section 38. Interestingly, consent in these Sections is not defined.

The Minister's Committee Stage amendments

In his Committee Stage amendments, the Minister has removed Sections 6(3)(c) and 9 (2)(c) from the Bill, thereby vindicating our position. The Minister has not brought forward amendments addressing our other concerns with the Bill.

However, Sections 6 to 9 and 10 still permit the relevant bodies to require unspecified 'contact details' before the exercise of the Right of Access to their personal data is permitted. This is a requirement for individuals to provide personal data for a purpose other than identifying their personal data. The EDPB *Guidelines* on the Right of Access make clear that:

> *It should be remembered that, as a rule, the controller cannot request more personal data than is necessary to enable this identification, and that the use of such information should be strictly limited to fulfilling the data subjects' request.*

2.3.7 Format of request for birth certificate or birth information

In Sections 6, 9 and 10 the Bill permits data controllers to specify the mode by which a request for a birth certificate or birth information (i.e., the individual's personal data) can be made: '*An application…shall…be in such form as the recipient body may specify'*.

The EDPB *Guidelines* on the Right of Access make it clear that it is not permissible for data controllers to specify their own format for a request:

> *There are no specific requirements on the format of a request. The controller should provide appropriate and user-friendly communication channels that can easily be used by the data subject. However, the data subject is not required to use these specific channels and may instead send the request to an official contact point of the controller.*

2.4 A PATERNALISTIC MECHANISM?

The primary purpose of the Information Session, even if the Minister's amendment carries, is to convey a message to certain adopted people that it is important to respect their parents' privacy. If the Government believes the Information Session is necessary, then it follows that the Government also believes that adopted people do not understand what it means when a person says they do not want contact and that they require additional instruction in this respect. **If the Government is not of the belief that adopted people have difficulty in understanding people's privacy rights, then the Information Session should not be required.** Instead, a fair way of balancing the right to information with the right to privacy would be to ensure the new Contact Preference Register is adequately resourced and widely advertised.

Prejudicial views about adopted people are commonplace in discussions surrounding their right to information, and they are not unique to Ireland. For example, in the United States, lawyer Greg Luce of the Adoptee Rights Law Center says that one of the top tropes he comes across in his work is the idea that adopted people are *'stalkers'*. He argues that it is closely related to the stereotype of adopted people as *'angry and needy children'*. According to Luce:

> *The stereotype goes something like this: that in our deep and justified desire to know the simple facts of our own births and to live with and possess own own [sic] full identities and heritage—that is, to see ourselves mirrored in the faces of others—we will disrupt anyone who gets in our way and 'out' anyone we find. That is, once we spend years of our lives trying to work out to whom we were born, we will suddenly 'pop up' on the doorstep of that birthparent and say 'surprise, you're my mom.'…Recently in Maryland legislators went all in with every stereotype and trope about adoptees in order to disempower us. The idea of adoptee as stalker was paramount, with one legislator claiming that we were ultimately destroyers of families.…We live a complicated life involving juggling all the ideas of to whom and where we belong. We are experts at navigating those complexities, and we are likely one of a few groups of people with the most expertise on the planet in doing so. Not academics, not legislators, not those of you who 'know someone who is adopted.' Actual adult adopted people like me. Try listening to us without buying into myths that attempt to control us. We are not stalkers intent on upending relationships and destroying families, (which, by the way, happen to be our families). We just want our truth, often contained on a single piece of paper called an original birth certificate. What we do with our truth is similar to what you do with yours: hold it, have it, and figure out who you are.*[19]

A similar scenario played out during the debates surrounding the UK *Children Act 1975,* which granted adopted people in England and Wales the right to access their birth certificates. Under that legislation, people adopted prior to 1975 must attend a counselling session before obtaining their birth certificates. Erica Haimes and Noel Timms, who conducted a three-year study on the compulsory counselling requirement under the legislation, argue that on one hand the *1975 Act* was *'a law for the provision of information'*, yet on the other it was also conceived of as legislation protecting parents.[20] According to John Triseliotis, in the months prior to the enactment of the *1975 Act*, strong opposition developed to birth certificate access, with some Members of Parliament portraying adopted people as potential 'blackmailers'.[21] Politicians and certain sections of the media:

> *…tended to convey a view of adoptees as potentially vindictive 'second-class' citizens. When the Clause providing for access [to birth certificates] was passed, all kinds of hazards, dangers, and harassments were anticipated by the Press. As examples we can look at headlines in the News of the World (10.10.76) 'Mums in fear of knock at the door', the Daily*

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[19] See: https://adopteerightslaw.com/5-most-pernicious-myths-about-adult-adopted-people/

[20] Erica Haimes and Noel Timms, *Adoption, Identity and Social Policy: The Search for Distant Relatives* (Aldershot: Gower, 1985), 19-21, 27.

[21] John Triseliotis, 'Obtaining Birth Certificates,' in *Adoption: Essays in Social Policy, Law, and Sociology,* ed. Philip Bean (London and New York: Tavistock, 1984), 46.

Mirror (27.10.76) 'Haunted by the past', and the Daily Telegraph (11.10.76) 'Fears of emotional upsets over 'reveal all' Adoption Law'.[22]

Supporters of this position argued that Section 26 raised the likelihood of adopted people destroying the lives of others, and maintained that requiring compulsory counselling prior to the release of birth certificates would provide *'a check or restraint against possible hasty actions by adoptees'*.[23] **The Information Session is unnecessary in 2022 in Ireland, just as the counselling requirement was unnecessary in 1970s England and Wales.** In his empirical analysis of the research carried out on the impact of the *1975 Act*, Triseliotis found that:

> *The calamities anticipated by sections of the media, politicians, and some organizations have not materialized. The various studies carried out so far suggest that the vast majority of adoptees act thoughtfully and with great consideration for the feelings of both their birth and adoptive parents.*[24]

2.5 MOST MOTHERS SUPPORT INFORMATION RIGHTS FOR ADOPTED PEOPLE

Few mothers speak out about their experiences, and this silence is often wrongly perceived as a wish for secrecy and a need to forget the past. Most mothers have not yet been facilitated in expressing their views, and in the ensuing vacuum, various commentators presume to know what the majority of mothers are feeling, i.e., allegedly terrified of their adult children.[25] On the day the Bill was published one reporter alleged that it is mothers who have blocked progress in this area:

> *…many thousands of women would have wanted their identity kept secret…but they will no longer be allowed [to] stay unidentified*'.

He claimed this is:

> *going to cause some difficulty for many women because what happens if the child [sic] contacts them anyway*'.

In emails to adopted people the Minister has claimed to have knowledge that some mothers 'may be very concerned about contact being made with them'. The Department's RIA argues that:

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22 Triseliotis, J. (1984). Obtaining Birth Certificates. In P. Bean (Ed.), *Adoption: Essays in Social Policy, Law, and Sociology* (pp. 39–53). London and New York: Tavistock, p. 46.

23 Ibid.

24 Triseliotis, J. (1984). Obtaining Birth Certificates. In P. Bean (Ed.), *Adoption: Essays in Social Policy, Law, and Sociology* (pp. 39–53). London and New York: Tavistock, p. 51.

25 E.g.: Martina Devlin, Mothers of Adopted Babies Face a New Trauma if the Cloak of Invisibility Is Suddenly Torn Away, *Irish Independent*, 12th June, 2014; Evelyn Mahon, Women who gave up their children for adoption should not be made to suffer twice, *Irish Times*, 4th July, 2019; Patricia Casey, We must learn the lessons of adoptions as fertility treatments bring new identity crisis, *Irish Independent*, 18th November 2019; Sarah Carey, Government had good cause to seal records of Mother and Baby Homes commission, *Irish Independent,* 31st October, 2020.

> *In terms of the privacy rights of mothers, the final report of the Mother and Baby Homes Commission of Investigation made it clear that mothers often had little or no choice but to give up their children, amongst a culture of shame and stigma. The secrecy has continued throughout some of those mothers' lives and there are mothers who have not told anyone that they had a child. These women may be very concerned about contact and the impact on their current circumstances and family.*

The Minister and his Department have not provided even one piece of evidence to back up their claims that some women *'may be very concerned about contact'*, nor have they provided any proof that adopted people are likely to disrespect their mothers' privacy. In fact, these assertions are contradicted by facts in the public domain.

There is no evidence that mothers in the past sought secrecy from their children, nor is there evidence that most women are currently seeking the same thing. New data released by the AAI to the Clann Project indicates that just **99** parents have indicated that they wish to have no contact with their daughter or son at the moment and do not wish to share information. This figure represents **3.4%** of the **2,942 parents on the register** and **0.05%** of the approximately **200,000 parents** affected by forced family separation.[26] A further **57 parents** wish to have no contact but **are willing to share information**, representing **1.9%** of the total number of parents on the register.[27] (See also Section 2.6, which provides evidence that far more adopted people have opted for no contact than parents.)

NACPR CONTACT PREFERENCES OF PARENTS	
Willing to have contact	2786
No contact at the moment	99
No contact but willing to share background/medical information	57
Total	**2942**

Table 1: Extract from NACPR data provided by the AAI

In the Clann Project and ARA's experience, many mothers would very much like to trace their daughters and sons; however, many believe that it is not possible or even legal for them to do so. Their silence must be viewed in context; when their babies were adopted they were told to walk away and forget they gave birth.[28] This is well illustrated by Caitríona Palmer, who says that after she was born, her mother returned to her teaching job living *'as two separate people: the teacher,*

[26] See: http://adoption.ie/how-many-adopted-people-are-there/
[27] Source: email from the Adoption Authority to the Clann Project, 4th February, 2022.
[28] Vivienne Darling, 'Social Work in Adoption: Vignette,' in *Social Work in Ireland: Historical Perspectives,* ed. Noreen Kearney and Caroline Skehill (Dublin: Institute of Public Administration, 2005), p. 187.

keeping it all together; and the secret mother, grief-stricken, who would never again feel whole'.[29] The discourses surrounding adoption in Ireland are still dominated by a culture of shame and secrecy, and this hinders many women from moving past the rule of silence that they were forced to adhere to after they gave birth. However, it is possible to cultivate a more open culture, and this is confirmed by the fact that when mothers speak publicly about their experiences, other mothers feel encouraged to tell their family members about what happened to them. The impact of public empathy cannot be underestimated. For example, when Philomena Lee spoke out in 2013, it caused what has been termed the 'Philomena effect', where many mothers who were previously living in secrecy found the courage to come forward.[30]

2.6 INFORMATION VERSUS CONTACT

When considering the purpose of the Information Session it is also important to understand that although there is a tendency to view 'information and tracing' as one and the same thing, for adopted people, the right to information about themselves and the prospect of relationships with family members are completely separate issues. Not all adopted people want contact with family members, and no adopted person is demanding the right to a relationship. Some adopted people do not want contact with their mothers at all, while others will wait for a period of time after obtaining their birth certificates before attempting to contact their mothers and/or family members.

NACPR data indicates that a total of **1,122** adopted people have registered a 'no contact' preference, representing **11.4%** of the 9,867 adopted people on the NACPR, **80.1%** of whom are willing to share information. [31]

NACPR CONTACT PREFERENCES OF ADOPTED PEOPLE	
Willing to have contact	8735
No contact at the moment	223
No contact but willing to share background/medical information	899
Total	**9867**

Table 2: Extract from NACPR data provided by the AAI

[29] Palmer C (2016) *An Affair with My Mother.* Dublin: Penguin Ireland, p. 191.
[30] See: http://www.bbc.com/news/world-europe-26236475
[31] Source: emails from the Adoption Authority to the Clann Project, 4th and 7th February, 2022.

2.7 WHY IS AUTOMATIC ACCESS TO BIRTH CERTIFICATES SO IMPORTANT?

2.7.1 'Just-talk'

The birth certificate is a document that non-adopted members of the population take for granted. Most people do not give it a second thought, and thus it can be difficult for adopted people to adequately convey the significance of such a simple document to non-adopted people. As researchers Erica Haimes and Noel Timms put it, ***'something so self-evidently reasonable as...wanting to know who your parents are becomes immediately complex when needing explanation'***.[32] Haimes and Timms observed in the adopted people who participated in their study an attribute they labelled *'just-talk'*, where adopted people used the word *'just'* in order to:

> *…normalise their request [for information], thus minimising its dramatic and, therefore, potentially threatening nature: 'I just wanted to find out who I was basically'; 'I just wanted to find out who my mother and father were'; 'It was just curiosity over the name'.*

It should not require justification, but for the avoidance of doubt: for adopted people, their birth certificates hold huge significance. Birth certificates are a vital link to adopted people's original identities, as most adopted people grew up with very little or no knowledge of their personal history. An adopted person's birth certificate is also a link to their mother, to the place they were born—indeed, to the **very fact** that they were born in the first place.

The State deliberately hid adopted people's identities from them to facilitate closed, secret adoptions. Adopted people should not have to explain to that same State why unconditional access to birth certificates is a fundamental and non-negotiable requirement of any legislation governing their lives. For many, communicating this is a difficult task (*'just-talk'*), but nonetheless, for decades, adopted people have emailed successive ministers, including the current Minister for Children, explaining the importance of unfettered access to their birth certificates. Despite their efforts, the simple call for unconditional access to a public record has again fallen on deaf ears.

2.7.2 Few people will be affected so why is the Information Session an issue?

During the Second Stage debates on the Bill, the Minister seemed to suggest that the mandatory Information Session was not problematic because most people will not be affected by it. He stated that:

> *I believe Deputy [Holly] Cairns said yesterday that a very small proportion of mothers will have a no-contact preference. I want to explore that because she is correct in that. The Information Session only takes place in circumstances where a parent has registered a no-contact preference. If the parent has registered a preference for contact or if the parent has not made any entry into the contact preference register, the adopted person seeks the*

[32] See: Erica Haimes and Noel Timms, *Adoption, Identity and Social Policy: The Search for Distant Relatives* (Aldershot: Gower, 1985), 53.

information and the information is sent out to him or her. That will cover the vast majority of cases.

Of the 4,500 parents [sic][33] who used the [NACPR], only 99 requested no contact. Going forward, I think that will be the kind of ratio we will see between those who will register no-contact preferences versus contact preferences. Even if only one parent registers a no-contact preference, he or she will be actively setting out a privacy concern about the potential release of his or her information to the adopted person.

Regardless of how many people may be directly affected by the Information Session, the vast majority of Irish adopted people hold the view that nobody should be left behind.

For example, in November 2019, stakeholders firmly rejected Minister Zappone's 'Option Two', which contained 'a presumption in favour' of the release of information to adopted people instead of automatic access for all. In discussions regarding Minister Zappone's proposals, the then 2,200 members of ARA's peer support group were unanimous that they were unwilling to leave any of their fellow adopted people behind.[34] Similar views are reflected in recent discussions about this Bill (and the General Scheme of the Bill) in the peer support group (which currently has 2,678 members, see **Fig 5**). Please note that group membership is vetted to ensure only those with a genuine connection to adoption in or from Ireland are admitted.

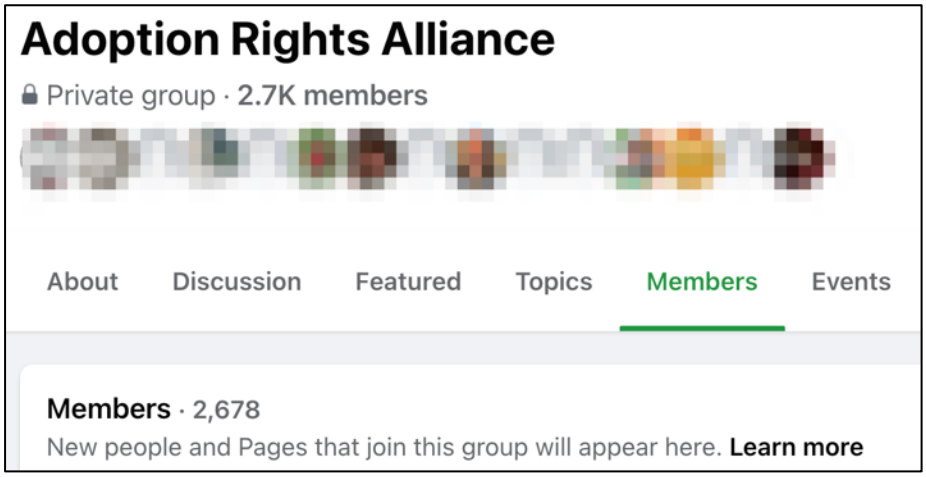

Fig 5: screenshot from ARA peer support group (identifying details have been blurred out).

A law that affects one adopted person affects all adopted people. Adopted people are not willing to leave behind even a small number of individuals who might have to attend an Information Session. The fact that such a mechanism exists at all means that in the Government's view, **all adopted**

[33] As set out in the NACPR data provided by the AAI, the total number of parents on the NACPR is 2,942 and not 4,500. The figure of 99 represents the number of parents who want no contact and who are not willing to share information (3.4% of the total). There are 57 parents who want no contact but are willing to share information. Source: email from the Adoption Authority to the Clann Project, 4th February, 2022.

[34] See: https://www.facebook.com/groups/adoptionrightsalliance

people have difficulty understanding people's privacy rights and thus people whose parents do not want contact need to be policed. **Adopted people have made clear that they reject the Information Session and remain steadfast in their entirely reasonable call for unconditional access to their birth certificates.**

2.8 THE INFORMATION SESSION IS STILL DISCRIMINATORY, UNNECESSARY AND OFFENSIVE

Despite the Minister's claim that the Bill *'reflects significant improvements and enhancements'*, the Information Session remains a deeply discriminatory, unnecessary, and insulting mechanism imposed on adopted people and adopted people alone. If this Bill passes with the Information Session intact, it will cause more harm than good. Legal challenges are an inevitability. **Our insistence on the removal of the Information Session is non-negotiable—under no circumstances will we support its inclusion in the Bill.**

2.9 INFORMATION MEETING FOR ADOPTED PEOPLE AGED UNDER EIGHTEEN

Section 18 of the Bill provides for an information meeting with adopted people aged between sixteen and eighteen years who have applied for their information. **This meeting must only be provided if requested by the adopted person in question, and it must be provided by a service of the adopted person's own choosing.** This meeting should not be conducted by a social worker, nor should the person holding the meeting attempt to influence the adopted person in any way **(see Section 7.1 for evidence of TUSLA's extremely troubling practices which some adopted people have viewed as an attempt to discourage them from tracing)**. If the adopted person requests emotional or psychological support, this should be provided by a service of their choosing. See our amendments to Section 18 of the Bill.

3. ACCESS TO RECORDS: PEOPLE EXCLUDED FROM THE LEGISLATION[35]

IN THIS SECTION:

3.1 Mothers
3.2 Relatives
3.3 People who were illegally sent overseas for adoption
3.4 People who were otherwise illegally adopted
3.5 People who were in non-adoptive 'care' settings
3.6 People who were not in institutions listed on the schedule

[35] Parts of this section are adapted from: Dr Maeve O'Rourke, *Birth Information and Tracing Bill 2022: An Analysis*. Available at: https://maeveorourke.medium.com/birth-information-and-tracing-bill-2022-an-analysis-e7705eb5ef7

The Bill excludes people in two ways: a) by how it defines people who are eligible to access information and b) by how it defines records which are considered relevant. (Definitions of categories of information are discussed in Section 4 of this Briefing Note.)

Definition of relevant person

Section 2 of the Bill defines a '*relevant person*' who may apply to TUSLA or the AAI for information only as:

- an '*adopted person*' (they must have been adopted under an adoption order or placed for adoption outside the State by An Bord Uchtála [the former Adoption Board], a registered adoption society, the AAI or TUSLA, or otherwise adopted in accordance with the law);
- a person who experienced or has reasonable grounds for suspecting that they experienced a '*boarded out arrangement*' (this must have been a legal arrangement authorised by a local authority or health board);
- a person who experienced or has reasonable grounds for suspecting that they experienced a '*nursed out arrangement*' (which must have been legal, with notice given to a local authority);
- a person who has been, or has reasonable grounds for suspecting that they have been, the subject of an '*incorrect birth registration*'; or
- a person who was, or has reasonable grounds for suspecting that they were, as a child '*in an institution specified in the Schedule*' (the *Schedule* lists only 14 Mother and Baby institutions and 30 County Home institutions).

Definition of relevant record

Section 2 defines a *'relevant record'* only as:

- a record that contains birth information, early life information, care information or medical information relating to a relevant person (but not all personal data held on the file);
- a record containing or noting a communication from a parent or genetic relative relating to a relevant person (but only records that are held by TUSLA, the Authority or a secondary information source);
- a record containing or noting a communication from a relevant person relating to a parent or genetic relative (but only records that are held by TUSLA, the Authority or a secondary information source);
- a record relating to the adoption of a child outside the State (but only records held by the Department of Foreign Affairs and only records relating to adoptions from 1 January 1940 and ending on 31 December 1979);

- a record or class of record prescribed by the Minister.

Moreover, by limiting the Bill's *Schedule* to 14 Mother and Baby and 30 County Home institutions the Bill leaves out the majority of the 182-plus entities involved in separating unmarried mothers and their children during the 20th century. See our amendments to Section 2 of the Bill.

3.1 MOTHERS

Most mothers are excluded from the legislation; the Bill does not recognise their right to information about their forced and/or illegal separation from their child. Unless their child died in a Mother and Baby or County Home institution, the Bill gives mothers no right to information about their child, about how and why they were separated, or about their own institutional or other abusive experiences. Mothers are not included in the Section 2 definition of '*relevant person*' who may request their information from TUSLA or the AAI. The only right of access which the Bill establishes for mothers (in Sections 26 to 30) is the right to request information about a child of theirs who died in an institution included in the *Schedule.* As explained above, the *Schedule* lists only 14 Mother and Baby institutions and 30 County Home institutions.

To take just one example of the tens of thousands of mothers who suffered abuse: this means that Philomena Lee (who at 88 years of age recently was forced to take High Court proceedings to highlight the Commission of Investigation's illegal treatment of survivors) will have no right under this Bill to access information — contrary to the Joint Oireachtas Committee's explicit recommendation.

During Pre-Legislative Scrutiny Minister O'Gorman stated that mothers will retain their right to request their personal data as normal under GDPR – in other words, that they do not need this Bill. This does not make sense because the Government also insists that the purpose of this Bill (for those to whom it applies) is to enhance the effectiveness of existing personal data access rights: recognising that those rights are not functioning properly because of the historical control and secrecy exercised by the institutions involved in family separation which continue to hold records. Moreover, many mothers will not be aware that they can access their personal data under GDPR. See also Section 8 for a discussion of the public information campaign under the Bill. See our amendments to Sections 26, 27, 28, 29 and 30 of the Bill.

3.2 RELATIVES

Most relatives are excluded from the legislation; only certain individuals may apply for information about a relative who died in 'care'. The Bill allows the parents of a child who died in a Mother and Baby or County Home institution to request information; however, other '*next of kin'* may not apply until it has been ascertained that those higher in the Bill's order of immediate relatives are deceased (i.e. a brother or sister may only apply if the deceased's parents are no longer alive) (Sections 26 to

30). Moreover, the Bill does not provide access to information about those who died in institutions other than the 14 Mother and Baby and 30 County Home institutions listed in the *Schedule* (Sections 26 to 30). The Bill allows the adult child of a deceased adopted person or person illegally registered at birth, lawfully boarded/nursed out or institutionalised in a Mother and Baby or County Home institution to apply to TUSLA or the AAI for their parent's information — but only if their grandparents (i.e. the parents of their deceased parent) are also deceased (Sections 21 to 24). See our amendments to Sections 20, 21, 22, 23, 24, 26, 27, 28, 29 and 30 of the Bill.

3.3 PEOPLE WHO WERE ILLEGALLY SENT OVERSEAS FOR ADOPTION

From the 1940s until the 1970s, over 2,000 children were sent from Ireland to the US and other countries for adoption.[36] On Christmas Eve 1995, Catriona Crowe, archivist with the National Archives of Ireland discovered the archival records associated with US adoption scheme.[37] When news broke of the discovery of the files in early 1996, it was the first time that there was widespread awareness of these practices. However, these illegal activities did not end in 1970. In his 1992 Clinical Report, Michael R.N. Darling, Master of the Rotunda Hospital raised the alarm about illegal adoption practices.[38] He recalled one case of *'a child being taken to America with no assessment of the couple involved and no follow up in the States for the safety and welfare of that child'*. Moreover, documents obtained by Clann and former journalist Conall Ó Fátharta via Freedom of Information requests (available here and here) indicate that over 350 additional children were sent to a minimum of 13 countries between 1921 and 1994.[39] Records indicate that the Department has been aware of these additional adoptions since 2019, when the AAI informed the Mother and Baby Homes Commission of the situation. Despite the State's knowledge that the adoption of Irish children to other jurisdictions was happening well into the 1990s, the Minister has excluded these now-adult adopted people from the Bill. The definition of a 'relevant record' only includes records held by the Department of Foreign Affairs relating to adoptions from 1 January 1940 and ending on 31 December 1979.

Furthermore, in relation to people adopted outside the State, the definition of an 'adopted person' under Section 2 only includes people whose adoptions were facilitated by the Adoption Board, a registered adoption society, the AAI or TUSLA. There are several problems with this aspect of the definition of an 'adopted person'. Firstly, until the 1952 Act came into force in January 1953, the Adoption Board did not exist, and adoption societies were not registered. Any person adopted outside the State whose adoption was facilitated prior to 1953 is therefore excluded. Secondly, these adoptions were **knowingly** omitted from the Adopted Children's Register and even after adoption

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36 See: Mike Milotte (2012) *Banished Babies: The Secret History of Ireland's Baby Export Business.* Dublin: New Island.

37 Irish Times, 9th March 1996, 'Routine Work Uncovers Vital Data on Adoptions'.

38 See: https://www.lenus.ie/bitstream/handle/10147/248718/ClinicalReport1992RotundaHospital.pdf

39 See: http://clannproject.org/wp-content/uploads/AAI-FOI-072020_Redacted.pdf and http://clannproject.org/wp-content/uploads/AAI-FOI-082020_Redacted.pdf

was legalised in 1952, the Adoption Board was exempted from overseeing the arrangements. This was confirmed in a Seanad debate around the 1963 Adoption Bill, when then Minister for Justice, Charles J Haughey said that *'the Adoption Board have no function in regard to a child taken out for adoption in America'.*[40] In the same Seanad debate Professor James Dooge said:

> *There is a very widespread feeling that the adoption code is being broken in this manner. If the statistics were included in the annual report of the Adoption Board, those sufficiently interested to read the report would be able to see the correct position. There should be some annual published Statement.*[41]

Thirdly, adoptions to America and elsewhere were illegal adoptions. Section 11 of the *Adoption Act 1952* required all adoptive parents to be resident in Ireland, while Section 40 criminalised the removal from the jurisdiction of a child of unmarried parents except for the purpose of living with a relative abroad. Such adoptions are still illegal under Section 23 of the *Adoption Act 2010*. Is the Minister suggesting that the Adoption Board, the AAI and TUSLA have facilitated illegal adoptions?

We understand 'information' to also mean information about and the opportunity to experience one's heritage and history, including a person's family history. Despite the promises made by politicians in 1996, Irish adopted people who were sent to America have been almost completely ignored by the State. This is in stark contrast to the State's approach to other members of the diaspora. People sent outside the State for adoption were overlooked in the *National Genealogy Policy*, agreed in December 2012, and the *'Year of the Gathering'* came and went in 2013 without a single invitation extended to Irish people who were sent to America for adoption. The State, in conjunction with the equivalent authorities in the US and elsewhere, should provide subsidised 'homeland tours' for people who were sent abroad for adoption. Doing so would be consistent with the recently published Department of Foreign Affairs' Ireland's Diaspora Strategy 2020.

Finally, the State has ignored its responsibility under Article 2 of the Constitution of Ireland, which states that:

> *It is the entitlement and birthright of every person born in the island of Ireland, which includes its islands and seas, to be part of the Irish Nation. That is also the entitlement of all persons otherwise qualified in accordance with law to be citizens of Ireland. Furthermore, the Irish nation cherishes its special affinity with people of Irish ancestry living abroad who share its cultural identity and heritage.*

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40 Adoption Bill 1963 Seanad Debate, 22nd January 1964. See: https://www.oireachtas.ie/en/debates/debate/seanad/1964-01-22/speech/243/

41 Adoption Bill 1963 Seanad Debate, 22nd January 1964. See: https://www.oireachtas.ie/en/debates/debate/seanad/1964-01-22/speech/135/

A guarantee of Irish citizenship, and assistance to claim such citizenship, should be provided to every person who was sent outside the State for adoption. For people who are interested, repatriation options should also be made available. See our amendments to Sections 2 and 18a of the Bill.

3.4 PEOPLE WHO WERE OTHERWISE ILLEGALLY ADOPTED

Certain adopted people subjected to illegal arrangements have no rights under the Bill. Section 52 provides for the amendment of the *Civil Registration Act 2004*. These amendments include the insertion of the definition of an 'affected person'. According to the Bill, an 'affected person' is a person to whom the following applies:

> *(a) an entry in the register of births relating to his or her birth was made on or before the 31st day of December 1980,*
> *(b) in the entry referred to in paragraph (a), the name of a person other than his or her mother was entered as his or her mother, and*
> *(c) the person named as mother and, if applicable, father, in the said entry assumed the role of a parent in relation to the person and treated that person as her or their lawful child.*

There are several problems with this definition. Firstly, the legislation only applies to people whose births were illegally registered before 31st December 1980. The General Scheme of the Bill stated that an affected person was someone whose birth was illegally registered before 31st December 1970. This date may have been arrived at because the St Patrick's Guild (SPG) illegal adoption cases announced by former Minister Zappone in 2018 were registered between 1946 and 1969. If this is the logic behind the Department's decision to insert a date limit, it is a deeply flawed one. Illegal adoptions were not exclusive to SPG, and there is no evidence whatsoever to suggest that the illegal registration of births ceased on New Year's Eve in 1970 or 1980.

Secondly, the State has long been aware of illegal adoptions and yet the Department has ignored what the State knows about these practices. For example, in January 1965, Mary Keating of St Rita's private nursing home in Ranelagh was convicted in the Dublin District Court of forging the official birth register by registering adopted infants as the natural children of their adoptive parents.[42] Central government was well aware of the case, as evidenced by the opening of a file at the Department of Justice.[43] In 1997, Mike Milotte's *Banished Babies* included a chapter on the illegal adoption practices at St Rita's.[44] In 2010 Conall Ó Fátharta's award-winning investigation of the illegal

[42] Mike Milotte (2012) *Banished Babies: The Secret History of Ireland's Baby Export Business.* Dublin: New Island.
[43] Department of Justice Files at the National Archives, File Nos 345/96/545. Although she had been convicted of falsely registering births, Mary Keating continued to operate her private nursing home specialising in maternity cases at St Rita's until her retirement over a decade later.
[44] Mike Milotte (2012) *Banished Babies: The Secret History of Ireland's Baby Export Business.* Dublin: New Island.

adoption of Tressa Reeves' son received widespread coverage. Moreover, in 2018, Clann's Principal Submission to the Mother and Baby Homes Commission of Investigation (a copy of which was sent to then Minister Zappone) provided witness evidence of a privately-arranged illegal adoption from St Rita's.[45]

Although the State is clearly aware that these practices were not restricted to one agency or a single timeframe, instead of ensuring that each and every affected person can access their information, in the Bill proper the Minister merely changed the original cut-off date from 1970 to 1980 instead of removing the time limit altogether. And, the Minister has also excluded St Rita's nursing home, along with at least 137 other entities, from the *Schedule*. See our amendments to Section 52 of the Bill.

3.5 PEOPLE WHO WERE IN NON-ADOPTIVE 'CARE' SETTINGS

The Bill does not recognise the rights of people who were in non-adoptive 'care' settings except for a lawful boarding/nursing out placement or a Mother and Baby or County Home institution. In the Section 2 definition of a 'relevant person' who may apply to TUSLA or the AAI for information, an 'adopted person' must have been adopted under an adoption order or placed for adoption outside the State by An Bord Uchtála, a registered adoption society, the AAI or TUSLA, or otherwise adopted in accordance with the law. A boarded-out person must have had a legal arrangement authorised by a local authority or health board. And, in the case of a person who was nursed out, the arrangement must have been legal, with notice given to a local authority. See our amendments to Section 2 of the Bill.

3.6 PEOPLE WHO WERE NOT IN INSTITUTIONS LISTED ON THE *SCHEDULE*

In order to be considered a 'relevant person' under the Bill, a person who was not legally adopted or the subject of an illegal birth registration or the subject of a nursed out or boarded out arrangement must have been (or must have reasonable grounds for suspecting that they were) as a child '*in an institution specified in the Schedule*'. However, the *Schedule* lists only 14 Mother and Baby institutions and 30 County Home institutions, whereas Clann is aware of at least 182 entities that were involved in separating unmarried mothers and their children during the 20th century. The Schedule is discussed in greater detail in Section 4.4 below.

[45] Clann Report, page 35-36.

4. ACCESS TO RECORDS AND THE RESTRICTION OF GDPR RIGHTS[46]

IN THIS SECTION:

4.1 The fundamental right of access to personal data
4.2 An adopted person's adoption file is their personal data
4.3 Personal data and (re)definitions of information
4.3.1 Definition of 'care arrangement'
4.3.2 Definition of 'care information'
4.3.3 Definition of 'early life information'
4.3.4 Siblings and the definition of 'genetic relevant information'
4.3.5 Definition of 'relevant record'
4.3.6 Provided items
4.4 Information sources and data controllers
4.4.1 Schedule
4.4.2 Church data controllers
4.5 Medical records and medical information
4.5.1 Adopted people's medical information
4.5.2 Family medical history
4.6 Administrative records
4.7 Safeguarding of records and a dedicated archive
4.7.1 Dedicated archive
4.7.2 Safeguarding of records
4.8 Restrictions under Section 62

As this section explains, the Bill appears destined to create a situation where TUSLA and the AAI implement this Bill's provisions to the exclusion of their obligations under both the GDPR and Article 8 of the EU Charter of Fundamental Rights. The Bill restricts the type of information that TUSLA and the AAI must provide to those who request their personal files. If this Bill proceeds in its current form, countless complaints to the DPC and litigation in Irish and European courts are inevitable. **This is an unacceptable position in which to put people who have already experienced so much abuse of power.**

In emails to adopted people the Minister has claimed that GDPR rights '*will be unaffected*':

> *With regard to GDPR, the existing system of Subject Access Request and FOI requests remain in place, and will be supplemented by this legislation. Current GDPR rights will be unaffected.*

[46] Parts of this section are adapted from: Dr Maeve O'Rourke, *Birth Information and Tracing Bill 2022: An Analysis*. Available at: https://maeveorourke.medium.com/birth-information-and-tracing-bill-2022-an-analysis-e7705eb5ef7

Subject access requests under GDPR play an important role in accessing information, but they do not provide an effective legal framework for the release of identity information to adopted persons.

This has been recognised by the Data Protection Commissioner, who wrote to me last December and highlighted the need for this legislation.

I am absolutely committed to addressing the historic imbalance of rights that saw adopted people denied access to information that is rightfully theirs. I believe that this legislation achieves that.

In Section 6.4 we provide evidence of TUSLA's current misguided interpretation of GDPR rights and how the Agency is failing to even follow its own guidelines. **That evidence demonstrates that it is certain that the discriminatory and unnecessarily complex system envisaged under the Bill will lead to even further misinterpretation.** We disagree with the Minister's assertion that GDPR rights '*will be unaffected*'.

Moreover, the Department acknowledges in Section 2.1.4 of its Data Protection Impact Assessment (DPIA) that the *'same data sets [as those covered in the Bill] will also be subject to FOI requests under the Freedom of Information Act 2014, and Subject Access Requests under the Data Protection Act 2018 and the General Data Protection Regulation 2018'*. However, Section 2.1.4 of the DPIA also states that the Department intends to produce *'guidelines...to ensure a standard method of processing requests for access to information, to guide data controllers and aid consistency of approach.'* As we were concerned the Bill will have a direct impact on GDPR practices for data controllers, and that it will in turn have a detrimental effect on the rights of data subjects, we submitted a complaint to the European Commission and wrote to the DPC.

On 11th February, the Department updated its DPIA (new version available here) without notifying affected people and their advocates. The Department added the following to page 1 to *'to clarify that the references to applications refer to applications under the Birth Information and Tracing Bill'*:

> *Any and all references to the processing of applications relate to applications received under the Birth Information and Tracing Bill.*

Section 2.1.4 (mentioned above) has also been amended to add the following in relation to the guidelines that will be issued:

> *This standard method of processing is in respect of applications received pursuant to the Birth Information and Tracing Bill only. This, in turn, has no impact on the methodology applied to the processing of SARs under GDPR or similar.*

Here the Department is acting as if the GDPR does not govern all processing of all personal data (including data processed under the Bill), and that the EU law principles of necessity and proportionality can be ignored. As the EC has stated:

> ***Any restrictions to fundamental rights must be necessary and proportionate. This is required by the EU Charter of Fundamental Rights, which is binding EU law.***

Moreover, on page 22 the Department removed its erroneous claim (as pointed out in our letter to the DPC) that the *'GDPR has evolved since its recent inception'* added the following line:

> *The Birth Information and Tracing Bill is, therefore, framed as enabling legislation which sits within the framework of the GDPR.*

This means in effect that the Minister and his Department have finally acknowledged that the Birth (Information and Tracing) Bill is enabling legislation within the framework of an EU law. **The Minister and his Department have placed the Government squarely and inescapably in the position of failing to meet its Member State obligation to *'not contravene EU law, including the Charter [of Fundamental Rights]'*:**

> *When Member States adopt or change laws on a matter where EU law imposes concrete obligations, **their laws may not contravene EU law, including the Charter,** because such legislative action would constitute implementation of EU law.*

In light of this, Article Eight Advocacy and the Clann Project will be updating our complaint to the European Commission.

Moreover, several sections of the Bill indicate that TUSLA and the AAI will be permitted to process relevant records only in accordance with the Bill. **If these bodies stop complying with their EU data protection law obligations in favour of the Bill's new regime, this situation will breach EU law because the GDPR does not allow blanket dis-application of its provisions.** Nonetheless, Section 44(3) of the Bill provides that the '*use or disclosure of any information transferred to the Authority or retained by a primary information source*' is not authorised '*other than in performance by them of their functions under Parts 2, 3, 4, 5, 6, or 7*' of the Bill. Section 56 of the Bill states that TUSLA and the AAI are permitted to process information received from the Mother and Baby Homes Commission of Investigation only '*where necessary and proportionate for the performance of its functions under this Act*'. (See our amendments to Section 56 of the Bill).

4.1 THE FUNDAMENTAL RIGHT OF ACCESS TO PERSONAL DATA

Article 8(2) of the Charter of Fundamental Rights states that everyone has *'the right of access to data which has been collected concerning him or her, and the right to have it rectified'*. This is a

distinct and separate right. Additionally, Article 15.1 of the GDPR states that a '*data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where that is the case, access to the personal data'.* Article 15.3 of the GDPR requires data controllers to '*provide a copy of the personal data undergoing processing'.* Recital 63 of the GDPR makes clear that everyone has *'the right of access to personal data which have been collected concerning him or her, and to exercise that right easily and at reasonable intervals'*.

The Birth Information and Tracing Bill proposes a range of unlawful restrictions on the right of access to personal data under EU law. In light of this the Clann Project and Article Eight Advocacy have submitted a complaint to the European Commission. We have also written a joint letter to the Data Protection Commissioner, urging her to intervene before the legislation is enacted.

4.2 AN ADOPTED PERSON'S ADOPTION FILE IS THEIR PERSONAL DATA

With the exception of records that are **solely** a mother's personal data (e.g., her medical records), **the entire adoption file is an adopted person's personal data**. To explain: the child is the central character in the adoption process. Without a child to be adopted, there is no adoption, and, there is no adoption file. Without the adopted person, the adoption file would not exist. At birth, adopted people were given names, usually by their mothers, and, where a legal adoption took place, their births were registered under those names at the GRO. When the adopted person's adoption order was granted (or where the person's birth was illegally registered), they involuntarily took on a new name and a new adoptive identity. At that point the adopted person's life trajectory was permanently altered. All case notes, correspondence and other documentation leading up to the granting of the adoption order played a role in irreversibly changing the path the adopted person's life would take. For example, had the social worker involved in selecting an individual's adoptive parents chosen another couple to raise the adopted person, their life would have taken a different course. Therefore, records such as correspondence, home studies, assessments of suitability, character references, case notes and other documents are all undeniably the adopted person's personal data. Correspondence and other records relating to an adopted person wellbeing, including queries about the person (regardless of what age they were at the time the query was made), are also their personal data. Any case notes, discussions, correspondence arising from such correspondence are also the adopted person's personal data.

When combined, the records on an adopted person's file form a narrative of how they came to inhabit their current identities; for example, how and why they were separated from their mothers, how they came to be placed with their adoptive family. In some cases, the files will also expose illegal activity. Thus, the adopted person's adoption file is inextricably linked to their identity. Apart from records that are *solely* mothers' data (for example, mothers' medical records), these files are the adopted

person's personal data as defined under the GDPR: they are part of their physical, physiological, genetic, mental, economic, cultural and social identity.

In this context, it is worth repeating that in Nowak v Data Protection Commissioner of Ireland (Case C434/16, 20 December 2017) the CJEU held that:

> *The use of the expression **'any information'** in the definition of the concept of 'personal data', within Article 2(a) of Directive 95/46, reflects the aim of the EU legislature to assign a **wide scope** to that concept, which is **not restricted to information that is sensitive or private**, but **potentially encompasses all kinds of information, not only objective but also subjective**, in the form of **opinions and assessments**, provided that it 'relates' to the data subject.* (para 34)

Instead of imposing unlawful restrictions on adopted people's (and other affected people's) fundamental rights, the Bill should make every effort to ensure their right to access all of their personal data is vindicated. Data controllers must be given clear, statutory guidance and robust oversight that puts an end to the current discriminatory practices in this area.[47] (See also Section 6.4.)

4.3 PERSONAL DATA AND (RE)DEFINITIONS OF INFORMATION

Instead of establishing a mechanism whereby adopted people's GDPR rights to their personal data can be clearly met, the Bill eviscerates those rights by re-defining information and limiting access under certain categories, which are discussed below. In emails to adopted people who have raised concerns about this issue, the Minister has claimed:

> *The definitions within the Bill have also been highlighted. While I can understand these concerns, this is done in order to ensure as much information is made available …To provide maximum clarity and consistency, the Bill sets out a highly specific and clearly defined suite of information for which access is absolutely guaranteed. However, it is important to note that this list is non-exhaustive, and will not prevent the release of any personal data over and above that specified within the definitions.*[48]

The fact that the list is '*non-exhaustive*' will not prevent personal data from being withheld. These categories of information are open to a range of different interpretations and given how badly data controllers in this area currently handle information access (see Section 6.4), it is a certainty that much personal data will be held back. Moreover, the process is also likely to be extremely confusing for applicants.

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[47] See Appendix of Clann Project and Article Eight Advocacy letter to the Data Protection Commissioner: http://clannproject.org/wp-content/uploads/Clann_A8A-Letter-to-DPC_10-02-22.pdf

[48] Emphasis in original.

Moreover, instead of requiring data controllers to provide data subjects with a full schedule of records held, several Sections, of the Bill[49] state that *'a relevant body...may provide the relevant person with a statement setting out'* the information *'that is contained in the records that it holds'* **This is not equivalent to what must be provided to a data subject who makes a Subject Access Request.** See our amendments to Sections 2, 11, 12, 13 and 14 of the Bill.

4.3.1 Definition of 'care arrangement'

The definition of 'care arrangement' is closely related to the definition of 'care information', which is discussed in the next section. Currently, the Bill restricts the definition of a 'care arrangement' to nursed out, boarded out and foster care arrangements, arrangements where children were placed with prospective adoptive parents (which is restricted further in the definition of 'care information) and arrangements where a child was an institution specified in the *Schedule* attached to the Bill. However, as discussed in Section 4.4.1, the *Schedule* merely covers a quarter of the institutions, agencies and personnel involved in forced family separation in Ireland. See our amendments to Section 2 of the Bill.

4.3.2 Definition of 'care information'

We have several concerns about how the draft Bill defines 'care information'. Firstly, the definition ignores the fact that **this information is the affected individual's personal data**. Secondly, the definition **excludes care provided by mothers, other genetic relatives and guardians**. Because adopted people were so young when they were confined in Mother and Baby Homes and similar institutions, few have recollections of their time there. Adopted people have been denied even the most basic details about their early years and therefore any information (whether positive or negative) about their own early experiences about general conditions in these institutions is extremely important to have. Many adopted people were cared for by their mothers while still confined in Mother and Baby Homes. Other adopted people would have been visited by their mothers and/or fathers in institutions such as Temple Hill or Stamullen. In other cases still, adopted people may have lived with their mothers prior to adoption and there may be references in their adoption file(s) to reflect this. All such information is part of an adopted person's history and heritage and must be included in the records provided to them.

Thirdly, **the definitions of 'care' and 'early life' information are subject to subsection (2) of Section 2 of the Bill**, which states that:

> *the period referred to in the definition shall be deemed to end—*
> (a) *in the case of an adopted person, on the date on which he or she became an adopted person, and*

[49] Sections 9(3)(b), 10(3)(b) 11(2)(b), 12(2)(b), 21(2)(b), 22(2)(b), 27(2)(b) and 28(2)(b).

(b) *in the case of a person who is, or has been, the subject of an incorrect birth registration, on the date on which the person named as mother and, if applicable, father, in the entry in the register of births concerned assumed the role of parents in relation to the person and treated that person as her or their lawful child.*

This means in effect that the Government wishes to withhold records created after the person was adopted (whether legally or illegally) from adopted people. **Records were still created long after adoption orders were made (and long after births were illegally registered).** In many instances, mothers wrote letters to the adoption agency months and years after the adopted person's birth. By way of example, below we provide a screenshot from the schedule of the file of an adopted person who was born in 1973 (see **Fig 6**).[50] As evidenced in the schedule, one of the records (which was withheld from the person[51]) is described as 'birth mother correspondence' and is dated five years after the adopted person's birth.

TUSLA
An Ghníomhaireacht um Leanaí agus an Teaghlach
Child and Family Agency

Freedom of Information
Child and Family Agency
Dublin North East
Units 4/5 Nexus Building
Blanchardstown Corporate Park
Ballycoolin
Dublin 15

[redacted]

SCHEDULE OF FILE

[redacted]

Page	*Details*	*R/W/RWD*	*Exemption Code*	*Remarks*	*Further Information*
1	Records	RWD	4[4]	Third Party information	Birth Mother correspondence – **26.10.1973 & 11.12.1978**
3-5	Records	W	4[4]	Third Party information	Adoptee's original birth cert long version & short version
16	Records	W	4[4]	Third Party information	Birth Mother correspondence – **No Date on page**
18	Records	RWD	4[4]	Third Party information	Birth Mother correspondence – **No Date on page**
20	Records	W	4[4]	Third Party information	Adoptive Parent(s) correspondence – **28.08.1990**

Fig 6: Extract from schedule of adopted person's file

Moreover, as demonstrated in the Clann Report, an increasing number of adopted and boarded out people are coming forward to report that they experienced abuse in their adoptive families. For example, Witness 1 told Clann that she was '*poorly fed and was always hungry…I was regularly smacked and hit on the backs of my legs'.* After her foster parents were reported to the Irish Society for the Protection of Cruelty to Children, Witness 1 was sent to the Good Shepherd Industrial School at Sundays Well in Cork, where *'life was extremely hard'*. She says she *'only ended up there as a result of having been placed with a wholly inappropriate family by the people at Bessboro'.*[52] Witness 28 said that '*Throughout my entire childhood I was subjected to repeated physical, mental and sexual abuse by my adoptive family.'* She says that '*There was no follow-up monitoring or assessment following the adoption. In my view this was a significant failing of the system because it allowed two vulnerable children to be subjected to repeated abuse from a*

[50] Some details have been withheld to protect the confidentiality of the person who donated the information.
[51] RWD means 'released with deletions', however, this is a typographical error as the correspondence in question was completely withheld.
[52] Clann Report, paras 2.55-2.56.

very early age'.[53] Witness 67 has evidence that St Patrick's Guild and the Adoption Board were aware that she was not settling in well with her adoptive parents and says the Irish adoption system *'completely failed'* to protect her from being subjected to '*to psychological cruelty, as well as physical abuse, by giving me a cocktail of anti-psychotic and other psychiatric medications until I was eight years old, and also by insisting that I should have numerous unnecessary medical procedures'.*[54] Witness 55 said that: '*My parents' drinking was not a secret and I do not believe that if a proper vetting process had been followed they would have been allowed to adopt me'.*[55]

Often, crucial answers concerning the circumstances of adoptive family abuses and the failure of the system to protect the child are contained in the person's adoption file. In some cases, there may be correspondence with adoptive parents dating many years after the person's birth. For example, one Clann Project witness provided evidence that important details concerning the 'care' provided by their adoptive parents was contained in her adoption files but withheld by TUSLA and the AAI in an application for personal data under the GDPR.[56] Additionally, in **Fig 6** above, a withheld entry is described as *'adoptive parent(s) correspondence'* and is dated seventeen years after the adopted person's birth. This adopted person was abused within their adoptive family throughout their childhood and teenage years, so this correspondence is of crucial importance to them. Under the Bill as currently written, the above Clann witnesses and other adopted and boarded out people who were abused will be denied access to all records relating to the assessment of their adoptive/foster parents and records created after their adoption. See our amendments to Sections 2, 11, 12, 13 and 14 of the Bill.

4.3.3 Definition of 'early life information'

As set out in the previous section, **early life information is subject to subsection (2) of Section 2 of the Bill**, which means that records created after a person was adopted (whether legally or illegally) will be withheld. The definition of 'early life information' is additionally problematic in that it focuses on a specific timeframe of the person's 'early life'. The Bill's definition states that early life information *'means, in relation to a person, information that relates to him or her at any time* ***in the period following his or her birth*** *and ending on the date on which he or she attained the age of 18 years'*. **Taking subsection (2) of Section 2 of the Bill into account, this means that a person's early life information only covers the period after their birth until the time they were adopted.** Thus, Section 2(2) of the Bill contradicts and further restricts the already selective definition in Section 2(1) which claims that 'early life information' includes information relating to a person up until '*the date on which he or she attained the age of 18 years'.*

[53] Clann Report, para 2.58.
[54] Clann Report, para 2.62.
[55] Clann Report, para 2.59.
[56] Clann Report, paras 2.62-2.67.

Instead of imposing these unlawful restrictions, the Bill needs to spell out precisely what 'personal data' means in this context. By way of a small number of examples, for adopted people, their personal data in terms of their **physical, mental, and physiological identity** includes their place of birth, their circumstances of birth, their birth weight, physical condition during that time (both before and after adoption), family medical history, medical treatments, vaccine trials. An adopted person's personal data in terms of their **genetic identity** includes their name at birth and their parents' names. An adopted person's personal data in terms of their **economic, cultural and social identity** concerns a wide range of records and includes information from before and after their adoption or placement in informal care. It also includes information as to how the relevant person acquired their adoptive identity, the names of their genetic family members, their county/country of origin at the time of their birth, their parents' and grandparents' occupations at the time of their birth, the number of siblings and other relations in a person's genetic family, correspondence about the person, records surrounding the assessment and administrative processes associated with the person's adoption, the names of the people involved in the person's care. A more extensive description of personal data in this context is available in our amendments at Appendix Two. See our amendments to Sections 2, 11, 12, 13 and 14 of the Bill.

4.3.4 Siblings and the definition of 'genetic relevant information'

Section 2 defines '*genetic relative information*' as meaning only the following non-identifying information:

> *(a) whether the person has a genetic relative, or had such a relative who is deceased;*
> *(b) where the person has a genetic sibling or had such a sibling who is deceased —*
> *(i) the sex of the genetic sibling, and*
> *(ii) whether the genetic sibling is or was older or younger than the person*.

The definition of 'early life information' also ignores the State's duty to reunite siblings forcibly disappeared from each other. As currently written, the Bill denies access to information about who a person's siblings are (despite the GDPR defining 'personal data' as 'any information relating to' a person). Under the Bill, the '*early life information*' to which a person will be entitled is defined by Section 2 without any reference to information about a person's siblings.

In our experience, many adopted people and their siblings (whether adopted or not) are eager to learn about each other and be in contact, and they must be facilitated in doing so. In this respect it is useful to consider the Australian model. The *Access to records by Forgotten Australians and Former Child Migrants: Access principles for records holders and best practice guidelines in providing access to records* (DSS Access Principles) state that:

> *Every person, upon proof of identity, has the right to receive all personal identifying information about themselves, including information which is necessary to establish the identity of close family members, except where this would result in the release of sensitive personal information about others. This includes details of parents, grandparents, siblings – including half siblings, aunts, uncles and first cousins. Such details should, at minimum, include name, community of origin and date of birth where these are available.*

See our amendments to Sections 2, 11, 12, 13 and 14 of the Bill.

4.3.5 Definition of 'relevant record'

In addition to the significant issues raised in Section 3, the definition of a 'relevant record' fails to recognise that such records are an individual's personal data. The definition is also too narrow and needs to be expanded to include the administrative records of the AAI, TUSLA, adoption agencies, institutions and any other information source. See our amendments to Section 2 and 5 of the Bill.

4.3.6 Provided items

Section 2 defines a 'provided item' as:

> *an item, including a letter, photograph, memento or other document or object held by a relevant body that was provided, whether to the Agency, Authority or any other person, by or on behalf of a parent or genetic relative of a relevant person, or another person involved in the provision of care of the relevant person, for the purpose of its being made available to the relevant person in the event that it were to be sought by or on behalf of him or her*

The requirement that the provided item must have been '*for the purpose of its being made available to the relevant person'* places an unacceptable constraint on affected people's access to this personal data. Items of this nature which were left with an adoption agency or an institution are highly unlikely to have been provided for anyone else's benefit. See our amendments to Sections 2, 13 and 14 of the Bill.

4.4 INFORMATION SOURCES AND DATA CONTROLLERS

4.4.1 Schedule

The *Schedule* attached to the Bill lists only 14 Mother and Baby institutions and 30 County Home institutions, whereas Clann is aware of at least 182 entities[57] that were involved in separating unmarried mothers and their children during the 20th century. When the Bill was first published it appeared that the Minister had added one additional institution, as the *Schedule* in Bill as initiated lists 15 Mother and Baby Homes (the *Schedule* published with the General Scheme of the Bill contained 14 Mother and Baby Homes[58]). The additional Mother and Baby Home was 'Cork Manor

[57] Also available at Appendix One.
[58] That is, the 14 Mother and Baby Homes on the Terms of Reference for the Commission of Investigation

House', an institution unknown to the Clann Project. Deputy Kathleen Funchion asked the Minister when Cork Manor House was added to the *Schedule* and why only one institution was added, when there are at least 182 entities. In his response, the Minister ignored Deputy Funchion's second question and stated that:

> *I would like to thank the Deputy for drawing our attention to this typographical error in the Schedule of the published Bill.*
>
> *As she will be aware, the Schedule published as part of the General Scheme reads:*
>
> *'Bessborough Mother and Baby Home, CorkManor [sic] House Castlepollard'*
>
> *Due to the mistaken addition of line breaks, the schedule in the published Bill reads:*
> *'Bessborough Mother and Baby Home Cork Manor House Castlepollard'*
>
> *The list of institutions has not changed - the schedule attached to the General Scheme is the correctly formatted version. This typographical error will be rectified as the Bill is amended during committee stage.*

During the Second Stage debates on the Bill the Minister claimed to have addressed concerns surrounding the *Schedule*:

> *A further change, which reflects stakeholder feedback and a PLS recommendation, is the new section that empowers the Minister to add institutions to the Schedule as set out in the Bill. This new section will allow for the addition of any institution that was established or operated for the purpose of providing care to children in which children were placed and resident. The new section will mitigate of [sic] anybody being excluded from this Bill.*

However, the Minister is incorrect that '***any institution*** *that was established or operated for the purpose of providing care to children in which children were placed and resident'* can be added to the *Schedule*. Section 5 only provides for the Minister to add to the *Schedule* an institution ***'in respect of which a public body has or had a regulatory or inspection function'***. This means that a significant number of the 182 institutions, agencies and individuals involved in separating unmarried mothers from their children will still be exempt from the legislation. This does not mitigate against people being excluded from the Bill as the Minister suggests.[59] See our amendments to Section 5 of the Bill.

4.4.2 Church data controllers

As discussed in Section 7.2, Section 34 of the Bill authorises TUSLA and the AAI to request information from several data controllers including Roman Catholic or Church of Ireland dioceses or

[59] Please note that we inadvertently omitted this issue from our amendments sent to TDs and we will submit an additional amendment in advance of Report Stage.

parishes. This information can be sought only for the purpose of facilitating a trace and not so that records can be shared with the affected people concerned. Even more egregiously, church parishes, dioceses, religious orders or other religious entities have not been named as data controllers under the Bill. It is imperative that such records and data controllers are taken into consideration.

As evidenced in **Fig 7**, the registers in parishes where adopted people were baptised often contain the person's original name and adoptive name, as well as their mother's name and their adoptive parents' names. This was made possible because, as evidenced in **Fig 8**, the Adoption Board provided parish priests with the details once an adoption order went through. Yet, Section 86 of the *Adoption Act 2010*[60] prohibits the public from viewing a register linking the entries in the *Register of Births* with the entries in the *Adopted Children's Register*.

Ireland's closed adoption system was facilitated by close collaboration between church and State. Church data controllers cannot be ignored in this Bill and provision must be made to centralise all church records so they can made available to affected people. See our amendments to Section 2 of the Bill.

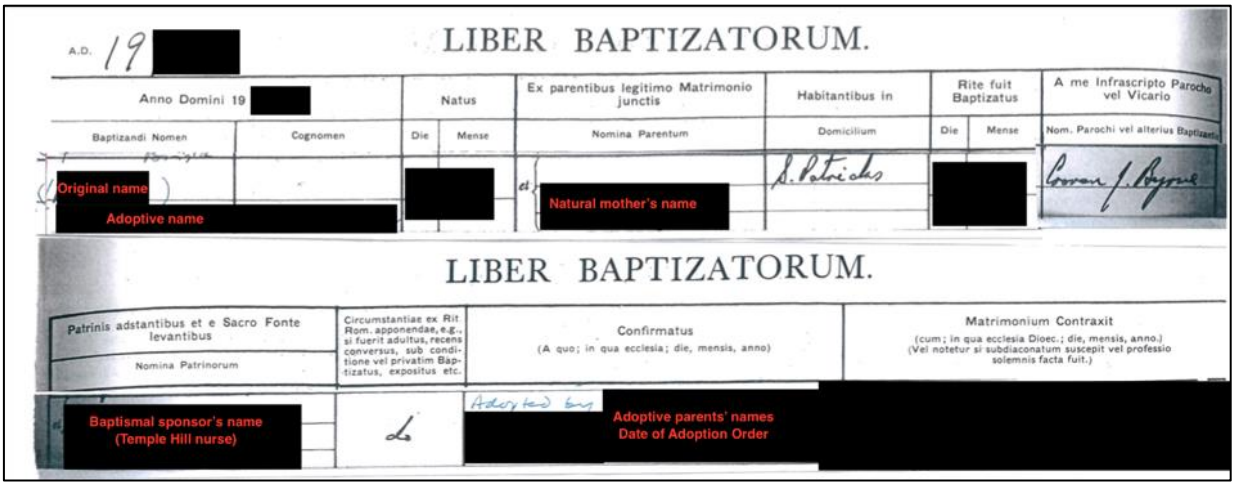
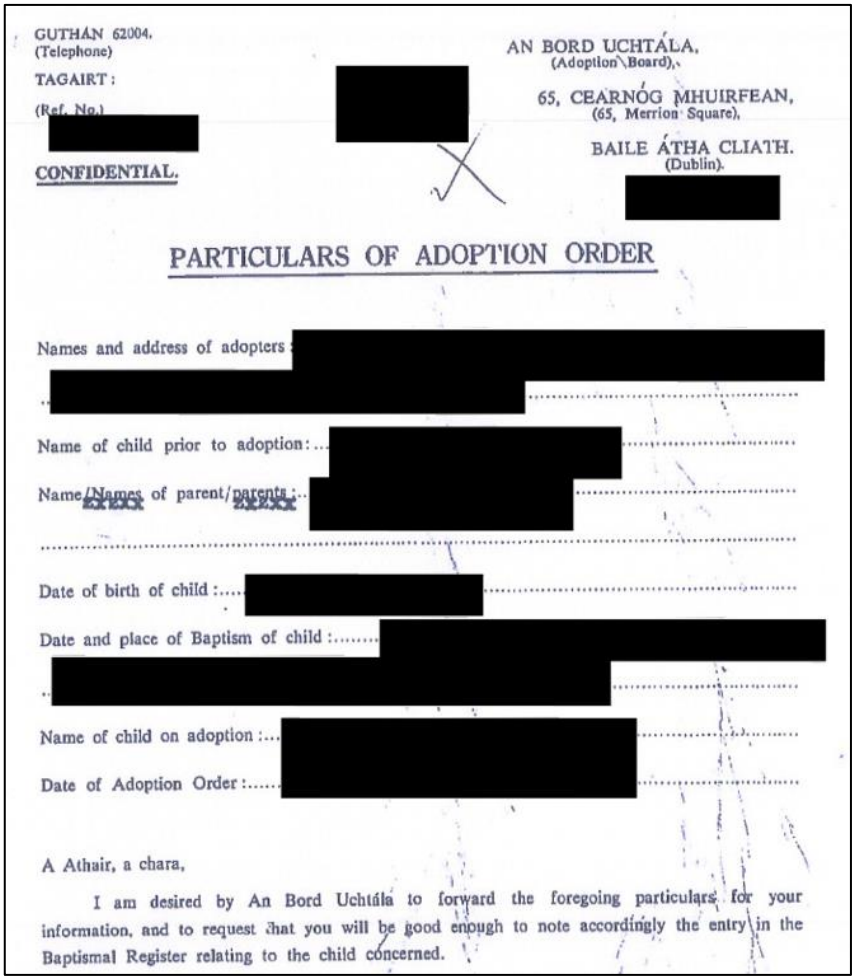


Fig 7: Extract from baptismal register showing an adopted person's record. All redactions have been carried out by Clann.

[60] Previously Section 22(5) of the *Adoption Act 1952.*



GUTHAN 62004.
(Telephone)
TAGAIRT :
(Ref. No.) [redacted]

CONFIDENTIAL.

AN BORD UCHTÁLA,
(Adoption Board),
65, CEARNÓG MHUIRFEAN,
(65, Merrion Square),
BAILE ÁTHA CLIATH.
(Dublin).

PARTICULARS OF ADOPTION ORDER

Names and address of adopters : [redacted]

Name of child prior to adoption : [redacted]

Name/Names of parent/parents : [redacted]

Date of birth of child : [redacted]

Date and place of Baptism of child : [redacted]

Name of child on adoption : [redacted]

Date of Adoption Order : [redacted]

A Athair, a chara,

I am desired by An Bord Uchtála to forward the foregoing particulars for your information, and to request that you will be good enough to note accordingly the entry in the Baptismal Register relating to the child concerned.

Fig 8: Letter from Adoption Board to parish priest. Some redactions have been carried out by Clann. The data controller redacted the adopted person's original surname and their mother's name (both of which had been provided by the adopted person).

4.5 MEDICAL RECORDS AND MEDICAL INFORMATION

4.5.1 Adopted people's medical information

Under Section 15 of the Bill, adopted people *'may apply'* for *'medical information'* that relates to them that is *'contained in a record'*. A person's medical information is their personal data, and they have a fundamental right under EU law to access that data, and not merely information *'contained in a record'* for which a person *'may apply'*. Recital 63 of the GDPR makes clear that medical *'data'* should be released, not information *'contained in'* the data:

> *A data subject should have the right of access to personal data which have been collected concerning him or her, and to exercise that right easily and at reasonable intervals…This includes the right for data subjects to have access to* ***data*** *concerning their health, for example the data in their medical records containing information such as diagnoses, examination results, assessments by treating physicians and any treatment or interventions provided.*

Apart from the fact that this restriction is in breach of the GDPR, there is also a real danger of vital medical information being held back. This can have potentially life-threatening consequences, as illustrated by what happened to the son of one adopted person who spoke to the Clann Project.[61] When he was in hospital as a child, the adopted person's son became extremely ill while under an anaesthetic and as the doctors were unable to ascertain what caused the reaction, they contacted the adoption agency in question. The agency eventually agreed to open the file, but a social worker said there was 'nothing of significance' in the records. Thankfully the doctors were able to determine that the child had malignant hyperthermia and the appropriate treatment was administered. According to the Mayo Clinic:

> *Malignant hyperthermia is a severe reaction to certain drugs used for anesthesia. This severe reaction typically includes a dangerously high body temperature, rigid muscles or spasms, a rapid heart rate, and other symptoms. Without prompt treatment, the complications caused by malignant hyperthermia can be fatal.*

A number of years later, the adopted person approached the agency to seek out her family of origin and was appointed a social worker (a different person to the previous encounter). During a meeting the social worker had the person's file on the table and pointed out that the abbreviation 'MHS' was written under family medical history. 'MHS' means 'malignant hyperthermia susceptibility'. Because the first social worker did not know what the abbreviation was, they deemed it irrelevant when contacted by the doctors. Fortunately, in this instance no harm came to the child, however, this example demonstrates the often-life-threatening consequences that can occur both when original records are not provided and when such matters are left up to interpretation. The experience described above is not an isolated incident. As a further safeguard to ensure that a scenario such as this does not arise in the future, the Bill should make provision for an emergency telephone number at the AAI for affected people to contact in life-threatening situations where medical information may be immediately required.

Section 15(6) of the Bill further restricts the data provided under that section and Section 16 to records:

(a) *relating to the adoption of a person,*
(b) *relating to a care arrangement, or*
(c) *created or held by a registered adoption society or an institution specified in the Schedule.*

This is contrary to Recital 63 of the GDPR which states that data subjects should have the right to *'data concerning their health'*. Recital 63 does not restrict medical data to a category or categories of records:

[61] Discussion held in January 2022.

> *A data subject should have the right of access to personal data which have been collected concerning him or her, and to exercise that right easily and at reasonable intervals…This includes the right for data subjects to have access to* ***data concerning their health,*** *for example the data in their medical records containing information such as diagnoses, examination results, assessments by treating physicians and any treatment or interventions provided.*

See our amendments to Sections 15 and 16 of the Bill.

4.5.2 Family medical history

Section 16 of the Bill sets out the process where adopted people can obtain family medical history, or *'medical information relating to [a] genetic relative'*. Section 16(2)(a) states that only information that is *'relevant to the health of the relevant person'* will be released. This is subject to Section 16(6), which states that the Minister *'may issue guidelines in respect of the type of medical information relating to a genetic relative that is, or is likely to be, relevant to the health of a relevant person'*. No information has been provided in the Bill as to how such guidelines will be formulated, save for a provision under Section 16(7) which states that the Minister 'may' consult with *'persons with expertise in the area of hereditary medical conditions,* ***as he or she considers appropriate****'*. Moreover, information that is relevant to a person's health is subject to change over time; does the Minister expect affected people to wait until they are seriously ill before seeking out 'relevant' family medical history?

While the Department's current practice of only releasing a person's health data to a medical practitioner appears to be dispensed with under Section 15 of the Bill, it remains in place under Section 16. Section 2.1.3 of the Department's DPIA states that:

> *the following measures and safeguards are provided for in order to mitigate the risk of a genetic relative being identified*
>
> - *Only information that is relevant to the maintenance of management of the persons health, i.e. a genetic or hereditary medical condition, will be released;*
> - *The information will be released with no identifying information present;*
> - *The release of the information will be to a GP for onward transmission to the person.*

Assuming these safeguards will be applied sequentially, the requirement that personal data **from which identifying information has already been removed** should be released through a general practitioner is **completely unnecessary** as a measure to protect against the risk of a genetic relative being identified. This constitutes forced disclosure of a data subject's personal data to a third party. See our amendments to Section 16 of the Bill.

4.6 ADMINISTRATIVE RECORDS

The Bill provides no mechanism for adopted people and mothers to access the administrative records of institutions, agencies and individuals involved in forced family separation. Administrative records include, for example, financial records, inspection files, contracts, governance records and correspondences. They might also include photographs of buildings and people, minutes of meetings, reports, diaries, annual reports, internal and external publications, staff records, medical records, maintenance payment records, death and burial records and registers, logbooks, incident reports, visitor books, baptismal registers, returns (weekly, monthly, quarterly or annual), records describing life in the institutions, other ephemera from the institutions such as fundraising materials, signs, books.[62]

Many of these records lie in the archives of previous inquiries into institutional abuse, where they remain effectively 'sealed' (e.g., the archives of the Commission to Inquire into Child Abuse, the Inter-departmental Committee to inquire into State involvement with the Magdalen Laundries and the Mother and Baby Homes Commission of Investigation). Many additional administrative records remain in the custody of a wide array of State and non-State bodies.

It is a violation of the right to an effective investigation under European and international human rights law that so many of the State's previous inquiries into so-called 'historical' abuse have happened in secret, refusing survivors and adopted people access to the administrative records gathered and refusing them the opportunity to comment on these records. The Government must (1) create an immediate right of access to these administrative files for those affected by the historical institutional, adoption and 'care'-related system, wherever they may currently be; and (2) ensure that administrative records are gathered into and made available in the central dedicated repository that will also provide individuals with access to their personal data and to information about the fate of their loved ones who died in 'care' settings. See our amendments to Section 2.

4.7 SAFEGUARDING OF RECORDS AND A DEDICATED ARCHIVE

Notwithstanding our **significant concerns about the omission of information sources and data controllers from the Bill**, we welcome the safeguarding of (some) records under this legislation. **However, the Bill does not go far enough to compel all relevant record holders to transfer their files to the AAI so that it can be made available to affected people (and eventually stored in the dedicated archive).** In particular, we are extremely concerned that individuals who facilitated private and often illegal adoptions (or their relatives if they are deceased) will be able to evade their responsibilities under this legislation. See our amendments to Part 7 of the Bill.

[62] See also: https://www.findandconnect.gov.au/resources/radgrants/records-significant-to-care-leavers/

4.7.1 Dedicated archive

In October 2020, we warmly welcomed the Government's promise to establish a national archive of records related to institutional trauma during the 20th century. We further welcome that the Secretary General to the Government has begun the process of advancing work in this regard. This is a hugely important opportunity for Ireland to establish a human rights-based, world-leading inclusive approach to acknowledging and documenting our history of institutional and gender-related abuse. **However, the State must depart from previous habits of excluding and compartmentalising people. Nobody can be left behind.**

In preparation for this national archive, which will take years to build, there is an **immediate need to create a dedicated repository** of adoption and other 'care'-related records with **professional archivists** providing the various forms of information that we describe in this Briefing Note.

4.7.2 Safeguarding of records

Parliamentary questions recently asked by Deputy Kathleen Funchion raise several serious issues regarding the safeguarding and preservation of records. Responses were supplied in writing to Deputy Funchion, copies of which she has kindly shared with Clann.

When asked if all its adoption records were scanned and to what standard, the AAI responded that:

> *The Adoption Authority of Ireland is currently undertaking a four year project involving the preparation, scanning and indexing of adoption files by a third party vendor. As part of this project the contents of the files are being indexed, cross-referenced and migrated into the Authority's document management system (DMS) to facilitate ease of retrieval. This process is being undertaken to enable the Authority to quickly identify, retrieve and issue digital copies of adoption records as mandated by current and envisaged legislation. The scanning of files results in high resolution (minimum 300 DPI), colour, PDF format, individual documents which are then assembled into digital files within the DMS in line with ISO standards.*
>
> *The Authority is the owner of 89,580 files created by itself or its predecessor bodies, and the custodian of 16,627 associated adoption agency files. Digitisation progress to date:*
>
> - *Domestic adoptions – consisting of 46,312 files, 13%, or 5,723, of which have been scanned and ingested to the DMS*
> - *Intercountry adoptions – consisting of 12,450 files, 10%, or 1,208, of which have been scanned and ingested to the DMS*
> - *National Adoption Contact Preference Register (NACPR) – consisting of 14,351 files, 100% of which have been scanned and ingested to the DMS*
> - *Adoption Agency files (where the Authority is custodian) consisting of 16,626 files, 100% of which have been digitised with 8% , or 1,481, migrated to the DMS*

A previous project was undertaken to scan all 43,954 domestic adoption files in case of a disaster and provide a digital back-up. These scans are of a much lower quality and would be of limited value in complying with envisaged Birth Information and Tracing legislation.

When asked if all its adoption records were scanned and to what standard, TUSLA responded that:

While a significant number of records have been scanned, owing to the volume of records held by the Agency gathered over the years a certain number remain in hard copy format. TUSLA continues with its plans to scan these records. Accordingly, the Agency is proceeding with the batch scanning and indexing of adoption and historical alternative care records with specialist providers who scan and index documents to a high standard and upload to a document management system.

Records will be scanned in the order of priority identified on foot of an assessment of records where a number of recommendations have been made in the safeguarding and digitisation of these important records.

In its response, TUSLA has failed to provide any level of detail on how many records have been scanned, the format of the scanned files or the standard of the scans. As discussed further below, the vague statement that *'a certain number [of records] remain in hard copy format'* is of grave concern: **in effect it means that an unknown number of records belonging to affected people are not backed up.** According to TUSLA, records will be scanned *'in the order of priority identified on foot of an assessment of records where a number of recommendations have been made in the safeguarding and digitisation of these important* records' but the Agency provides no information on what the order of priority is, the criteria informing the assessment or who carried it out. Even more concerningly, when asked about the location of all adoption records held by TUSLA and the safeguards that have been put in place to ensure the safety of the records, the Agency responded that:

There are adoption records held in 11 TUSLA locations; three of these locations are in the Dublin region in addition to locations in Drogheda, Cork, Waterford, Limerick, Galway, Castlebar, Sligo and Letterkenny.

The whereabouts of all adoption records held by TUSLA are listed on the TUSLA website and for convenience the link is set out below.

https://www.tusla.ie/services/alternative-care/adoption-services/tracing-service/where-are-records-held/

Existing safeguards to ensure the safety of the records include ongoing batch scanning and indexing of the records, limiting unnecessary access to the hard copy records, a tracking system for the records and utilising digitised records where available. Many records are stored in fireproof cabinets and/or fireproof rooms.

> *In response to an assessment of records and recommendations made for the safeguarding of these important records, TUSLA has put in place additional safeguards such as an overall Disaster Prevention and Recovery Plan and procurement of specialist Disaster Recovery Kits for each location. TUSLA has plans to put in place further safeguards such as staff training in records handling, a condition survey of the records by a professional conservator and retention of specialist disaster recovery support.*

In the first two paragraphs, TUSLA has described **where affected people can apply for records**. The Agency has not provided information **on the precise whereabouts of those records**. One address on the website provided by TUSLA is a post office box; are we to understand that the records are held in the TUSLA locations on the website or are they held in storage? If the records are held in storage, are those locations compliant with BS EN 16893:2018? The remainder of TUSLA's response suggests that this is not the case: '***Many records*** *are stored in fireproof cabinets and/or fireproof rooms'*. Similar to the answer above, this reply also refers to an *'assessment of records'* but we are given no information on the precise recommendations that were made for the safeguarding of records. The TUSLA letter also states that the Agency '*has put in place additional safeguards such as an overall Disaster Prevention and Recovery Plan and procurement of specialist Disaster Recovery Kits for each location'.* How can TUSLA claim to be in a position to prevent damage to the important records it holds if it is the case that ***'many'*** **but not all** of those records are stored in fireproof cabinets or fireproof rooms? Moreover, how can TUSLA claim to be in a position to recover lost records in the event of a disaster given that ***'a certain number'*** **of records have yet to be scanned**?

In fact, according to TUSLA's current Data Management Strategy, which covers the period from 2019 to 2022:

> ***Historical closed paper files will not be digitised at this time*** *due the scale of investment required and to instead enable a prioritised focus in the years from 2020 to 2022 on the considerable challenge to digitise all current case files.* ***However, all historical paper files will be identified and recorded in a complete registry****. In addition, a proposal with respect to the future management of these older closed files (including options for digitisation) will be developed as an input into the Agency's next data strategy post 2022.*

Instead of ensuring as a matter of urgency that historical files (many of which contain evidence of human rights violations) are scanned and preserved, TUSLA decided that the scale of investment required was too large. Instead, the Agency resolved to identify and record the files in a *'complete registry'*.

TUSLA's parliamentary question response concludes with the statement that the Agency *'**has plans to** put in place further safeguards such as **staff training in records handling**, a **condition survey** of the records by a professional conservator and **retention of specialist disaster recovery***

support'. TUSLA holds the largest number of adoption files in the country, yet it has not yet conducted a survey of the condition of the records, it does not have specialist disaster recovery support in place and it merely *'has plans'* to train its staff in records handling. These records are the personal data of affected people and it is most alarming that TUSLA appears to have a limited command of the situation.

When asked about the location of all adoption records held by the AAI and the safeguards that have been put in place to ensure the safety of the records, the Authority responded that:

> *The Adoption Authority of Ireland is the owner of 89,580 files created by itself or its predecessor bodies, and the custodian of 16,627 associated adoption agency files. These original files are held in hardcopy format on-site in the Authority premises of Shelbourne House, Ballsbridge, in Dublin.*
>
> *Authority records are stored separately from public and staff areas in designated sections of the premises with authorised staff swipe card access required to gain ingress/egress. Rehousing of files in archival quality folders and containers is completed for Authority records but not yet for adoption agency files.*
>
> *The Authority premise are not compliant with BS EN 16893:2018 'Conservation of cultural Heritage – Specifications for location, construction and modification of building or rooms intended for the storage or use of heritage collections'.*
>
> *Digitised versions of records are stored within the Authority's document management system (DMS) which is hosted on dedicated server in facilities managed by the Office of the Government Chief Information Officer (OGCIO)*

When compared to TUSLA, the AAI appears to have a far greater understanding of its responsibilities to safeguard the 100,000+ adoption files in its possession. However, considering the AAI's role in safeguarding records under this legislation, we are **extremely concerned** to learn that the Authority's premises are not compliant with the standards set for records of this nature. **This must be immediately rectified.**

The responses from AAI and TUSLA to these parliamentary questions raise significant concerns about the safety of thousands of adoption files containing the personal data of affected people. Firstly, and as a matter of urgency, the Government **must allocate adequate and dedicated resources to the AAI** to ensure that its role in safeguarding records can be fulfilled under this legislation. Secondly, **the records currently held by TUSLA must be immediately safeguarded** and placed in the care of a team of professional archivists. Thirdly, the Government must **immediately initiate an independent review** of the location, status and condition of all records held by TUSLA. This review should also include **an assessment of the Agency's capability to safeguard the records in its possession**. (See also Section 6.4)

Relatedly however, when the Minister was asked about the number of staff and the level of resources that will be allocated to TUSLA and the AAI to operationalise the Bill, the Minister merely stated that he had *'committed significant additional resources'* and deferred to TUSLA and the AAI for a response. In its reply, TUSLA stated that €3m had been allocated to the agency to support the implementation of the bill. Of the €3m, €1.8m will fund the recruitment of personnel, including 'Information Officers', which TUSLA terms 'Privacy Officers'. TUSLA's Privacy Officers have no role in safeguarding records.[63] In addition to the new Privacy Officers, *'several other support staff and social workers will be employed to support the information and tracing service'*. Support staff and social workers are not professional archivists and are not trained in the safeguarding of records. According to TUSLA, the remaining €1.2m allotted *'will [be] put toward the cost of developing information material for clients, funding of therapeutic and counselling services, staff training, and other costs associated with the running of operational front-line services'*. **Thus, none of the €3m allocated to TUSLA will be spent on safeguarding the records it holds—records which are already in an extremely precarious position.** In its response, TUSLA added that:

> *While the three million will assist in the Agency in its preparation and implementation of the legislation, TUSLA does anticipate a significant demand on its service upon commencement. To that end and in partnership with the Adoption Authority of Ireland, the Minister and the Department of Children, Equality, Disability, Integration and Youth, TUSLA will closely monitor organisational capacity* ***to respond to service demands*** *and this will inform business planning and resource allocation for 2023.*

While it is to be welcomed that TUSLA will monitor its capacity to respond to *'service demands'*, it is significant that again, the matter of safeguarding records receives no mention. According to TUSLA's *2021 Business Plan*:

> *An additional €4.3m will be allocated to address new developments across ICT, GDPR, Organisation Reform and to facilitate the transfer of mother-and-baby home records to Tusla.*

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[63] According to a TUSLA Candidate Campaign Information Pack dated May 2020, the purpose of the role of Privacy Officer is as follows:

> *Privacy Officers are responsible for the gathering, compiling and processing GDPR data subject requests (SARs), Freedom of Information (FOI) requests, and responses to parliamentary questions and representations (PAD). Each Privacy Officer will act as the first point of contact for data protection (DP) and FOI issues in their relevant Region, and will be responsible for the identification and rolling out of training requirements, as well as the monitoring and reporting of relevant DP and FOI metrics. Privacy Officers will adhere to Data Protection Unit (DPU) and PAD prescribed policy [process and risk], systems and standard operating procedures (SOPs) and attend privacy network learning and continuous development events.*

It is of note that only people who were already employed by TUSLA or the HSE were eligible to apply for the role of Privacy Officer during this recruitment campaign.

TUSLA's *2021 Business Plan* also states the following as an action under a section entitled *'Implement the ICT and Data Management Strategies'*:

> *Enhance the systems, structures and guidance required to establish a well-functioning records management environment in Tusla*

TUSLA's *2022 Business Plan* states that the Agency will establish an Information Management Unit by Q2, but the plan makes no mention of its responsibilities in relation to safeguarding historical records.

In response to a similar parliamentary question in relation to resource allocation at the Adoption Authority, the AAI issued the following response:

> *The Authority has been allocated a budget €2,454,000 in pay and €4,222,000 in non-pay for 2022.*
>
> *Pay*
> *This represents an increase on AAI's 2021 allocation of +€0.5m and was made in the context of the Birth (Information and Tracing) Bill 2022, it is also €75k more than what was requested by AAI for 2022.*
>
> *Non-pay*
> *This represents an increase on AAI's 2021 allocation of € +0.84m and was made in the context of the Birth (Information and Tracing) Bill 2022. However, this is €500k less than AAI had asked for in the estimates process for 2022.*

The AAI's response does not state how its resources will be allocated, however, it is of concern that the non-pay allocation is less than the Authority had asked for in the estimates process, especially since the Authority has said that its records are not stored to the required standard. The AAI's recently-published *Strategic Plan 2022-2024* states that the Birth (Information and Tracing) Bill will:

> *…have a significant impact on the capacity of existing staff and their workload, it will require the recruitment of additional staff to support the operationalising of this Bill and finally will require an expansion of existing facilities to cater for the storage of all adoption records that come under its stewardship.*

The AAI Strategic Plan also states that it will:

> *Engage with the Department in relation to work on the whole of Government commitment to establish a National Memorial and Records Centre (action 7 of the Action Plan for Survivors and Former Residents of Mother and Baby and County Home Institutions).*

4.8 RESTRICTIONS UNDER SECTION 62

In Section 62, the Department sets out a list of GDPR articles that are restricted under the Bill but no further information is provided within the draft Bill itself, or even in the Department's *'Plain English Overview'* of the Bill. Instead, affected people must read the Department's DPIA to find further information on what those restrictions entail. This is unacceptable as many affected people will not be aware of the existence of the DPIA. Moreover, restrictions such as those provided for under Section 62 of the Bill are governed by GDPR Article 23, which states that:

> *Union or Member State law to which the data controller or processor is subject may restrict* ***by way of a legislative measure*** *the scope of the obligations and rights provided for in Articles 12 to 22 and Article 34, as well as Article 5 in so far as its provisions correspond to the rights and obligations provided for in Articles 12 to 22, when such a restriction respects the essence of the fundamental rights and freedoms and is a necessary and proportionate measure in a democratic society*

The DPIA is a living document which by its nature will be subject to frequent review and change. Such a document cannot be considered a *'legislative measure'* as required by Article 23 GDPR.

According to its DPIA, the Department will not be able to comply with GDPR Article 14, which requires data controllers to provide information to data subjects where an individual's personal data has not been obtained from the person themselves. The DPIA states that:

> *It would be near impossible for a data controller to comply with this obligation given the historic nature of the records, the diversity of the records and the different social norms and administrative practices in place at the time they were created. Some records will have been collected by the data controller, for instance the adoption file retained by the Adoption Authority. In other cases, such as mother and baby home records, the Child and Family Agency is now the data controller however the records were created by the religious orders.*

While it may be difficult for current record holders such as TUSLA and the AAI to comply with all aspects of Article 14, given that these records relate to human rights violations, **there should not be a blanket restriction enshrined in law.** For example, the information that should be provided to data subjects (i.e., affected people) under Article 14 includes the identity and contact details of the original controller (or their representative). While an adoption agency may have closed, the religious orders and their companies, organisations and representatives are still in operation. Moreover, an adoption file may contain data that originated from several other data controllers, the identity of whom may be unknown to the affected person. The EDPB *Guidelines on Transparency*[64] state at paragraph 59 that:

[64] Article 29 Data Protection Working Party, 'Guidelines on transparency under Regulation 2016/679', adopted by the EDPB on 25th May 2018.

> *The situation where it 'proves impossible' under Article 14.5(b) to provide the information is an all or nothing situation because something is either impossible or it is not; there are no degrees of impossibility.* ***Thus if a data controller seeks to rely on this exemption it must demonstrate the factors that actually prevent it from providing the information in question to data subjects*** *… In practice, there will be very few situations in which a data controller can demonstrate that it is actually impossible to provide the information to data subjects.*[65]

The Minister and his Department have not demonstrated the factors that prevent them from providing the information in question.

The Bill also proposes to restrict GDPR Article 18, which concerns the right to restriction of processing personal data. According to the Department's DPIA:

> *A parent named in the records may wish to restrict processing on grounds that they believe there are inaccuracies. The onus would then lie with the data controller to verify the accuracy or otherwise of the disputed historical record and ensure that any processing of the data is restricted while this verification is taking place. The verification may be wholly impossible or may be extremely difficult and onerous in terms of historic records. During the time that the data controller is carrying out the verifications, the data cannot be processed and this will have implications for an application made by an adopted person. In cases where accuracy cannot be verified or remains contested, it could result a restriction of lengthy and indefinite duration, during which time the rights of the other party (i.e. the applicant) to their origins information cannot be vindicated.*
>
> *It is important to note that the Right to Rectification will remain open to data subjects who believe there is an inaccuracy on the file. As such, while data subjects cannot seek to restrict the processing of data for an indefinite duration, they can exercise their right to rectification in respect of any data which they believe to be inaccurate.*

While this restriction seems reasonable, it is absolutely imperative that mothers in particular are made aware of their right to rectify any errors on the file.

GDPR Article 21, concerning a person's right to object to the processing of personal data concerning them, is also restricted under the Bill. Given that the records in question relate to human rights abuses, this restriction is a sensible approach, particularly if a member of a religious order or another individual involved in making arrangements for an adoption wished to object to the processing of their data. However, the Department does not appear to view the restriction in this manner. According to its DPIA:

> *Allowing for the exercise of this right may have significant consequences for the operation of the information service envisaged by the proposed legislation.* ***There are currently a***

[65] Please note that we inadvertently omitted this issue from our amendments sent to TDs and we will submit an additional amendment in advance of Report Stage.

minority of parents named on birth certificates who have refused to provide consent to the release of their names meaning that, in some cases, redacted birth certificates are released to applicants. *The core purpose of the legislation is to change this and to enshrine in law the right of a person to know his or her origins and provide for the release of a birth certificate and birth information to adopted people and others in all cases.*

By not restricting this Article 21 right, data controllers would be obliged to consider applications of objection to processing on a case by case basis and this would likely create delays and blockages to the release of origins information to an adopted person, contrary to the intention of the proposed legislation. ***Some people have waited decades for this information and this Article has the potential to make them wait longer or to be denied their origins information.***

Here the Department is under the mistaken belief that GDPR Article 21 prevents the release of public records. Moreover, the Department is admitting its awareness that (unnamed) data controllers have redacted public records. However, instead of insisting that its agencies abide by the existing law, the Department alleges that this is why the legislation is necessary. We have raised this issue of the Department's interpretation of an objection under Article 21 as precluding any release of personal data with the DPC and await its response.

The Department's DPIA states that GDPR Article 12 *'will have an ancillary restriction due to the restrictions of these articles'*. Article 12 maintains that information must be communicated '*in a concise, transparent, intelligible, and easily accessible form*' and that controllers should use '*clear and plain language*' in their communication. **Under no circumstances should data controllers be permitted to stray from these principles.**

5. CONTACT PREFERENCE REGISTER

IN THIS SECTION:

5.1 Preservation of the NACPR
5.2 Format of contact preferences
5.3 Who can register
5.4 Advertising the CPR
5.5 Matches on the CPR
5.6 NACPR entries and the information session
5.7 The Minister's role in the CPR

Since the launch of the NACPR in 2005, ARA and its predecessors have called for the Register to be put on a statutory footing. We welcome the establishment of the new statutory-based Contact Preference Register (CPR) under the Bill, however, we also have several concerns.

5.1 PRESERVATION OF THE NACPR

We are alarmed that the Bill makes no provision to safeguard the existing registrations on the NACPR. Section 42(1) provides for the transfer of NACPR entries to the new CPR, however, Section 42(3) states that the AAI should **delete** the NACPR no later than 6 months after that section comes into operation. This is problematic on several fronts. Firstly, in light of the cyber attack on the Health Service Executive in 2021, it is imperative that all NACPR registrations are preserved. Secondly, it is essential to ensure that NACPR registrations are available in the event of human error during the transfer of entries to the new CPR. Thirdly, in the event of matches where one party has subsequently died, the other party may wish to see the physical registration form filled out by the deceased. Having a copy of a registration in the deceased person's own writing is far preferable than a transcription. Fourthly, as discussed below, the format of preferences on the NACPR is not the same as the CPR, and important data may be lost in the transfer, including the facility to receive a discreet notification if another party registers. Finally, the 14,368 people who have registered on the NACPR since 2005 have not given their permission for their data to be deleted. See our amendments to Part 6 of the Bill.

5.2 FORMAT OF CONTACT PREFERENCES

We have a number of concerns regarding the format of the new CPR. A great deal of thought went into how the NACPR would operate and how all categories of registrants could best be served. In advance of the establishment of the NACPR in 2005, then Minister for Children Brian Lenihan appointed an advisory group to the Adoption Board (now the AAI) to consult on the design of the register. The advisory group was comprised of adopted people (including ARA's co-founder Susan Lohan), parents, professionals, and officials. As a result of the work of the advisory group, the NACPR provides three options for people wishing to register a 'no contact' preference: i) No contact but willing to share medical information; ii) No contact but willing to share information; iii) No contact at the moment. Crucially, NACPR registrants also have the option of being discreetly notified when another party enters their details on the register.

The contact preferences on the new CPR set out under Section 38(11) are as follows:

(a) *he or she is seeking to have contact with the specified person;*
(b) *he or she is willing to be contacted by the specified person;*
(c) *he or she is not willing to be contacted by the specified person;*
(d) *he or she is seeking information in relation to the specified person and, if so, the nature of the information;*
(e) *he or she is not willing to have contact with the specified person but is willing to provide information if requested by a specified person.*

Firstly, option (c) should read *'he or she is not willing to be contacted by the specified person* ***at the moment****'*.[66] Many people registering a preference of no contact may be doing so not because they do not want contact with the other party but because they do not wish to deal with the situation at that time. The phrase *'at the moment'* helps to reassure registrants that they can change their mind in the future, and also lets the other person know that the situation may change in the future (in our experience this is often the case). Secondly, and for similar reasons, the option of being discreetly notified when another party enters their details on the register must be included on the CPR. Thirdly, '*if requested by a specified person'* should be deleted from option (e).[67] Registrants on the CPR should be facilitated to share information **regardless of whether it is requested by the other party.** This is particularly important in instances where the person who does not want contact dies after the time of their registration—if the other party has not yet registered and requests information in the future, the deceased person can no longer provide it. Moreover, people affected by forced family separation often feel they have no right to ask for information, so the option should be available to them to have information rather than leaving it up to them to ask.

5.3 WHO CAN REGISTER

Section 38(3) sets out who can register on the CPR. Section 38(3)(d) states that *'the adoptive parent of an adopted child'* can register, *'whether the child is living or deceased'*. **This subsection must be amended to omit parents who have been the subject of child protection concerns.**

Section 38(3)(e) states that *'the adoptive parent of an adopted person'* can register *'where the adopted person is deceased'*. **The Bill must be amended to allow adopted people to register an objection to such registrations in the event of their death.** This is particularly important for adult adopted people who were abused by their adoptive parents when they were minors. (See Section 4.3.2.)

Section 38(3) must be further amended to allow a friend of a deceased parent or deceased adopted person to register.

5.4 ADVERTISING THE CPR

Unfortunately, despite ministerial promises of regular advertising both in Ireland and abroad, the NACPR has not been advertised since it was first launched. A contact register is only ever as good as its advertising, and thus the NACPR has never reached its full potential. This must not be allowed to happen with the new CPR. Advertising should be both national and international and across all social media platforms. Special efforts should be made to ensure that older affected people are made

[66] Please note that we inadvertently omitted this change from our amendments sent to TDs and we will submit an additional amendment in advance of Report Stage.

[67] Please note that we inadvertently omitted this change from our amendments sent to TDs and we will submit an additional amendment in advance of Report Stage.

aware of the CPR, particularly people who have emigrated (for example, through outreach initiatives at emigrants' centres). If prospective registrants do not know of the existence of the CPR, they will not know to register, and this can lead to individuals believing that the other party is not interested in meeting them.

5.5 MATCHES ON THE CPR

If two or more registrants have been matched with each other on the CPR and they wish to be put in direct contact with each other with no further intervention or assistance from the AAI, TUSLA or any other State agency, **they should not be obstructed from availing of this option.** If two or more registrants have been matched on the register and they do not wish to be reunited through TUSLA, **another service must be offered to them.**

5.6 NACPR ENTRIES AND THE INFORMATION SESSION

Notwithstanding our position that the Information Session should be completely abolished, we particularly object to Section 42(2) which states that any entry in the NACPR *'shall be deemed to be…a statement made by him or her under the applicable paragraph of section 38(11), in relation to the other person'.* If a parent records a no contact preference under Section 38(11) it triggers the requirement for the adopted person to attend a mandatory Information Session. **This is not the purpose for which the NACPR was set up.**

Relatedly, Section 42 must be amended to insert a requirement for the AAI to contact the existing registrants on the NACPR to inform them that their entry will be transferred to the new CPR and to ascertain whether they wish to change their original preferences.

5.7 THE MINISTER'S ROLE IN THE CPR

Section 38(2)(c) states that one of the purposes of the CPR is to *'record such further information as the Minister may prescribe under subsection (13)'*. Section 38(13) states that:

> *The Minister, following consultation with the Authority, may by regulation—*
> (a) *prescribe information for the purpose of subsection (2)(c), and*
> (b) *provide for such further matters as he or she considers necessary for the effective operation of the register.*

The *Explanatory Memorandum* provides no insight into what further information the Minister might record on the register. Will this information be recorded on individual registrants' entries? If so, why? And for what purpose? Will the affected registrants be consulted? The Bill indicates that the Minister will be allowed to record unknown information in an unknown location on the CPR with no consultation other than with the AAI.

Furthermore, Section 38(6) states that:

The Minister may, at any time, issue directions in writing to the Authority in relation to the making of entries in the register, and the Agency shall comply with such directions.

It is extremely concerning that the Minister is permitted to issue **directions** (not guidelines) in relation to the CPR with no oversight or transparency.

6. TRANSPARENCY AND ACCOUNTABILITY

IN THIS SECTION:

6.1 Lack of meaningful engagement on the Bill
6.2 Expertise of people with lived experience
6.3 Guidelines in the Bill
6.4 Oversight of implementation of EU GDPR rights
6.5 Membership of AAI board
6.6 Immunity
6.7 Complaints mechanism
6.8 Review of the Act
6.9 Registration of TUSLA as an accredited body

6.1 LACK OF MEANINGFUL ENGAGEMENT ON THE BILL

The Minister has repeatedly claimed that he has consulted widely with affected people in relation to this Bill. The Minister has certainly interacted with hundreds of individuals, however, the contents of the Bill make clear that he has not had meaningful engagement with affected people and advocates who understand how the legislation will translate into practice. When he introduced the Bill in the Dáil, the Minister claimed that he had *'spoken to hundreds of affected individuals'* and that he had *'listened intently to stakeholders and sought to deliver clear and guaranteed rights of access to information'*. When Deputy Kathleen Funchion asked the Minister the number of engagements he has had with affected people on the Bill, he responded that:

> *In advance of, and during the drafting process of the Birth Information and Tracing Bill, I have continued to engage with and listen to stakeholders who are affected by the provisions of the Bill. I am immensely grateful to all of those people who gave their time to relay their experiences, concerns and proposals.*
>
> *In August 2020, February 2021, and March 2021 I met with adopted persons representative groups. This included representatives of both those who had experienced domestic adoption and those who had been adopted from Ireland to other jurisdictions. I greatly appreciated the unique insights provided from these interactions.*
>
> *Following the publication of the General Scheme of the Birth Information and Tracing Bill in May 2021, I hosted a webinar to explain the intention of the legislation and to respond to*

> *questions. This was supplemented with a series of dedicated meetings with stakeholder groups to discuss the proposed legislation. In June 2021, I had a meeting with mothers, with key items of discussion covering terminology, their right of access and right to rectification under the GDPR, and the release of medical information.*
>
> *Furthermore, I have also engaged in an intensive consultation process with individuals affected by illegal birth registration. The purpose of my consultation was to ensure that the legislative proposals for these persons adequately take account of the issues facing them.*

The Minister added that he had '*engaged with hundreds of individuals on the topic of the Birth Information and Tracing Bill through individual pieces of correspondence'*. According to the Minister, the above consultations were '*highly productive, with a range of themes emerging and informing the drafting process of the Birth Information and Tracing Bill*'. The Minister also said that his Department has *'regular, intensive engagement with the Adoption Authority of Ireland and TUSLA Adoption Services, both through the Birth Information and Tracing Implementation Group and more generally'*. **None of the above interactions with affected people could be characterised as *'regular intensive engagements'* of the nature the Minister and his Department has had (and continues to have) with TUSLA and AAI.**

When he was asked about the number of engagements he has had with TUSLA and the AAI on the Bill the Minister responded as follows:

> *In June 2021, I established the Birth Information and Tracing Implementation Group. This group is led by my Department, and includes representatives from the Adoption Authority of Ireland and TUSLA, the Child and Family Agency. The group meets on a regular basis, having held 8 meetings to date, whilst also progressing key pieces of work and liaising bilaterally between meetings.*
>
> *The Group's focus is on organisational and system readiness to support the provision of services under the proposed Birth Information and Tracing legislation. Included in the Group's work is the development of draft policy guidelines to support robust and consistent implementation of the legislation.*

The Minister added that in addition to the Implementation Group, his Department '*engages with both the Adoption Authority and TUSLA through regular governance and oversight meetings, where matters relating to the Birth Information and Tracing Bill are often discussed'*. **The Implementation Group was set up with the specific purpose of ensuring the *'successful implementation of the legislation in the interests of all those with questions on their origin*s', yet the Minister did not see fit to appoint a single affected person to that group.** When the Minister was asked why he did not appoint experts with lived experience and experts advocating on behalf of affected people to the Birth Information and Tracing Implementation Group, he did not answer the question. He instead responded that:

> *As part of the work of the Implementation Group, it was agreed that engagement with stakeholders would be beneficial to prepare for enactment and, to this end, I intend to convene a* ***stakeholder reference group****. It is envisaged that the work of this reference group will be aimed at supporting preparations for the implementation of the legislation when enacted. Its work will have specific regard to how individuals will apply for their information including application forms, processes and the public information campaign that will support implementation.*

The Minister intends to convene a (non-statutory) stakeholder reference group **only after** the legislation is enacted. Unless the 'stakeholder reference group' is put on a statutory footing, this Minister or a future minister will be able to disband it with no consequences. This will result in no ongoing engagement on the operationalisation of the legislation. Our concerns are not without foundation; this Minister and the previous minister have already breached the trust of members of the Mother and Baby Homes Collaborative Forum.

6.2 EXPERTISE OF PEOPLE WITH LIVED EXPERIENCE

The Minister's intention to convene a 'stakeholder reference group' is a step in the right direction. **However, it is time for the Government to move past tokenism.** Adopted people (some of whom are also advocates) have a wealth of experience in how legislation translates into practice. Members of Clann and ARA with lived experience of adoption have learned from their own personal interactions with information and tracing services over several decades. They have also been privileged to learn from the experiences of thousands of other affected individuals over the past two decades, including the 2,678 members of ARA's peer support group. The Clann Project's co-directors have extensive experience in gathering testimonies and advocating on behalf of adopted people, mothers and relatives, many of whom were speaking for the first time about the abuses they endured. When the NACPR was launched in 2005, the helpline of AdoptionIreland, ARA's predecessor organisation, was listed on the NACPR application forms distributed to every household in Ireland. This busy helpline was in existence from 2005 to 2006, and Claire McGettrick answered most of the calls.

The Minister's failure to take heed of the concerns of affected people and their advocates is perhaps most evident in the number of amendments submitted in advance of Committee Stage of the Bill. On Friday 18th February, Clann was notified that Committee Stage was delayed because of the sheer volume of amendments received by the Bills Office. The number of amendments was so high the office would not have had sufficient time to process them in advance of the Committee Stage debate scheduled for 23rd February. The Clann Project contacted the Bills Office to make enquiries about the number of amendments submitted and how this compared to other Bills. The Office responded as follows:

The Bills Office received over 1,200 amendment [sic] for Committee stage of the Birth information and Tracing Bill 2022.

The number of amendments submitted does differ depending on the bill, but this would certainly be well above average.

Maybe to give you a sense of scale, last year there were 4,283 amendments considered to bills (there were a number of significant bills), in 2020 there were 1,620 amendments and in 2019 2,660 amendments were considered by the Houses.

Had the Minister genuinely engaged with affected people and addressed their concerns, 1,200 amendments would not have been required simply to ensure the Bill does no further harm to affected people. See our amendments to Section 72.

6.3 GUIDELINES IN THE BILL

Several sections of the Bill refer to 'guidelines' which will be issued by the Minister, but the Bill provides no detail on what those guidelines will be, whether they will have a statutory footing, whether the relevant bodies will be sanctioned for failing to comply with those guidelines, whether such guidelines are in line with EU law or whether the Minister will consult with relevant experts (including experts with lived experience) before issuing them. These guidelines have the potential to adversely impact on the lives of affected people and therefore, the process must be far more transparent. See our amendments to Sections 19(1), 25(1), 31(1), 35(4), 37(1), 38(6) and 43(1).

6.4 OVERSIGHT OF IMPLEMENTATION OF EU GDPR RIGHTS

This section should be read alongside our Joint Submission to the Oireachtas Joint Committee on Justice Regarding the General Data Protection Regulation of 26th March 2021.

Currently, the Department, TUSLA, AAI and other data controllers are routinely misinterpreting GDPR rules to deny affected people access to their personal data. Affected people have had rights under the GDPR since 2018 yet these data controllers continue to misconstrue their responsibilities under EU law. For example, in the Appendix to Article Eight Advocacy and the Clann Project's letter to the DPC we provide a brief analysis of TUSLA management's current approach to dealing with Subject Access Requests (excerpts from which are included here). As explained in that analysis, in a letter to TUSLA on 23rd February 2021, the DPC had reservations about the Agency's approach to the application of GDPR Article 15.4:

The DPC questions this approach; it appears that Tusla considers the very act of providing a data subject with their personal data, which includes mixed personal data, will adversely affect the rights and freedoms of others due to the fact that the personal data would no longer fall within the scope of the GDPR. To automatically consider that a data subject exercising their Right of Access will adversely affect the rights of others without any other analysis appears contrary to the requirement to apply any limitation on an EU right in a strict

manner. It is also unclear whether in all instances the release of the personal data would fall outside the GDPR's material scope. The DPC also notes that birth certs, with the requester's birth mother name, is already publically available in the Register of Live Births, stored in the Research Room in the General Registrar's Office while also appreciating that the requester may not have the searchable criteria available to them to find this information.

By way of a further illustration of TUSLA's deeply troubling approach in this area, in a letter to the DPC on 8th February 2020 (from context we presume 2021 was intended), the Agency set out the following example ('*Example 3*') of a scenario where an adopted person is requesting their personal data:[68]

Michael Grayson, who was born in a Mother and Baby Home and subsequently adopted, submits an access request to Tusla for 'all personal data you hold concerning me'.

A Privacy Officer retrieves records relating to Michael, which include the relevant entry in the Mother and Baby Homes Commission of Investigation's database and the related records from which that entry was derived.

While preparing the records for release, the Privacy Officer identifies that, among other things, the relevant database entry and related records list Gabrielle Burnham as Michael's birth mother.

As the right to access originates in the Charter, insofar as nothing in the Charter may be interpreted as adversely affecting rights and freedoms, and because this position is reflected by Art 15(4) GDPR, the Privacy Officer notes that Michael's right to obtain a copy of personal data undergoing processing may not be regarded as giving rise to adverse effects vis-a-vis rights and freedoms.

Subject to any restriction, e.g. those set out at Section 60 of the Data Protection Act 2018, that must or otherwise may be applied to the right of access, the Privacy Officer releases the mixed data to Michael.

In relation to the scenario described in *Example 3*, TUSLA stated that:

Although the release of mixed data may not be regarded adversely effecting rights and freedoms, I anticipate, ***drawing on the National Adoption Service's extensive experience in this area****, that the response to an access request such as that set out in Example 3 may cause* ***serious harm to the requester's physical health, mental health, or emotional condition****.* ***Should the release of mixed data give rise to contact with the birth mother, she may also experience such harm.***

TUSLA's position on information release as described in the analysis above is most alarming on several fronts. **The experience of social workers in the National Adoption Service is completely**

[68] Available at: http://clannproject.org/wp-content/uploads/Right-to-Know-FOI_Tusla-MBH-DPIA.pdf (Reproduced with permission from and thanks to Right to Know.)

irrelevant to decisions concerning the release of an adopted person's personal data. Social work plays a crucial role in our society, however, **social workers should have no place in the decision-making processes surrounding the provision of information to adopted people or others affected by forced family separation.** Social work interventions are generally associated with situations where individuals or families are in crisis,[69] **however, adopted people (or their mothers) are not in crisis by default.** Moreover, there is not a shred of evidence in TUSLA's *Example 3* to suggest that providing Michael with his personal data will cause *'serious harm'* to his *'physical health, mental health, or emotional condition'.* Nor is there any evidence (a) that Michael will contact his mother Gabrielle or (b) that as a result of such contact she '*may also experience such harm'.* Moreover, what Michael does with his personal data (mixed or otherwise) is not TUSLA's concern.

Furthermore, an example of TUSLA's position on how its staff should handle a Subject Access Request relating to the archive of the Mother and Baby Homes Commission of Investigation is provided at pages 27-28 of the Agency's publicly-available *Access Requests Standard Operating Procedure Draft 2.2* (SOP). In the Summary column TUSLA describes its position on the correct application of the Article 15.4 restriction as follows:

> *If the response to a requester diminishes another person's enjoyment of a right or freedom, it will give rise to adverse effects. A person's rights and freedoms generally expire with them, this means that a release cannot adversely affect deceased persons. Art. 15(4) is applicable only when personal data's release to the requester will result in a concrete adverse effect on a specific right or freedom enjoyed by another person.*
>
> *The concrete adverse effect on a specific right or freedom must be cited when applying Art. 15(4). Consideration of its application should be guided by the requester and associated persons' circumstances.* ***Consult with a Social Worker, as outlined at Appendix 1, if information required for the application of this restriction is needed.***

In the Example column the process is described as follows:

> *Michael B. submits an access request to Tusla for birth and adoption information. A record holder retrieves a document listing Gabrielle B. as Michael's mother. An enclosed note states that during her engagement with the Adoption Information and Tracing Service, Gabrielle indicated that she doesn't wish to interact with Michael.*

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[69] As the website of the Irish Association of Social Workers states:

> *[Social workers'] work is mainly concerned with problem solving, with supporting service users, and working with service users and allied professionals to find solutions and to effect change. The problems and challenges span the life cycle. The issue might be a crisis or emergency or it could be providing support, information and advice to a person to cope with ongoing difficulties or loss.*

> *The requester and associated persons' individual circumstances are considered to assess whether the release of mixed personal data, i.e. personal data relating to both Michael and Gabrielle, will adversely affect Gabrielle's rights and freedoms.*
>
> ***A Social Worker is consulted to obtain information needed to inform the restriction's application.*** *As Gabrielle has indicated that she doesn't wish to interact with Michael,* ***it appears likely*** *that the release of mixed personal data* ***will adversely affect her right to respect for private and family life.***

There are several problems with this. Firstly, TUSLA is operating on the assumption that because Gabrielle does not wish to have contact with Michael, the release of his personal data '*will adversely affect her right to respect for private and family life'*. That is, TUSLA presumes that upon receiving his personal data, Michael will disrespect Gabrielle's wishes regarding contact.

Secondly, this is not evidence of a *'concrete adverse effect'*. It is speculation *('it appears likely'*) unsupported by any evidence from this jurisdiction or others. This is not a balancing test, this is reasoning using the architecture of the restriction to arrive at a predetermined outcome. No account is taken of the adverse effect on the requester's rights and freedoms. Since no *'concrete adverse effect'* is put forward no account can be taken of the severity or likelihood of the unmentioned and undescribed risk.

The European Data Protection Board *Guidelines on the Right of Access* cover this scenario at page 50:

> *The general concern that rights and freedoms of others might be affected by complying with the request for access, is not enough to rely on Art. 15 (4) GDPR. In fact the controller must be able to demonstrate that in the concrete situation rights or freedoms of others would factually be impacted.*

Thirdly, in the above guidance, TUSLA has instructed its staff to '***Consult with a Social Worker,*** *as outlined at Appendix 1, if information required for the application of this restriction is needed'****.*** Appendix 1 of TUSLA's SOP states that:

> *Although, in particular, serious harm may be anticipated,* ***Privacy Officers alone are not equipped or expected to carry out a comprehensive assessment in this connection. Consult with a Social Worker*** *if necessary in order to ensure the request is handled such as to facilitate* ***demonstration of compliance in respect of the applicable data protection law.***

The *'applicable data protection law'* (i.e., the EU GDPR and the *Data Protection Act 2018*) **does not** require data controllers to consult with social workers before records are released to data subjects. A covering letter from TUSLA to an adopted person dated October 2021 demonstrates the Agency's position on what the *'applicable data protection law'* is:

> *In accordance with governing Data Protection Legislation (GDPR, Data Protection Act 2018 & S.I. No. 83/1989), I can confirm that certain data has been omitted and/or redacted in our response*

TUSLA did not cite which regulation it is relying upon in refusing to supply the person with all of their personal data, however, Regulation 4(1) of S.I. 83/1989 states that:

> *Information constituting social work data shall not be supplied by or on behalf of a data controller to the data subject concerned in response to a request under section 4(1)(a) of the Act if it would be likely to cause serious harm to the physical or mental health or emotional condition of the data subject.*

However, Regulation 4(1) was amended by Section 68(3)(b)(ii)(I) of the *Data Protection Act 2018* as follows:

> *(A) the substitution of 'a request under Article 15 of the Data Protection Regulation' for 'a request under section 4(1)(a) of the Act', and*
>
> *(B) the substitution of* ***'the physical or mental health or emotional condition of the data subject, but this restriction on providing information applies only to the extent to which, and for as long as, that likelihood pertains.'*** *for 'the physical or mental health or emotional condition of the data subject.'*

Again, the *'applicable data protection law'*, (even S.I. 83/1989) **does not require data controllers to consult with social workers before records are released to data subjects.**

The above extract from TUSLA's SOP is the only example in the document of how to handle a Subject Access Request relating to personal data contained in the archive of the Mother and Baby Homes Commission, and indeed the only example of how to apply the GDPR Article 15.4 restriction. As such it can only be considered as providing a considerable nudge in the direction of applying the restriction on incorrect grounds to staff tasked with handling Subject Access Requests relating to the archive of the Mother and Baby Homes Commission of Investigation, and other Subject Access Requests which relate to the personal data of adopted persons.

TUSLA's example at pages 78-79 above concludes with a refusal to release personal data from a record which contains mixed data:

> *As such, Michael's right to access must be restricted as regards mixed personal data relating to Gabrielle and such personal data must be excluded from the response, citing the specific adverse effect on the relevant right.*

To reiterate, there is no *'concrete adverse effect'* cited in this example despite the Summary column (at left below) clearly stating this must be the case.

	freedoms generally expire with them, ... that a release cannot adversely affect deceased persons. Art. 15(4) is applicable only when personal data's release to the requester will result in a concrete adverse effect on a specific right or freedom enjoyed by another person. The concrete adverse effect on a specific right or freedom must be cited when applying Art. 15(4). Consideration of its application should be guided by the requester and associated persons' circumstances. Consult with a Social Worker, as outlined at Appendix 1, if information required for the application of this restriction is needed.	needed to inform the restriction's application. As Gabrielle has indicated that she doesn't wish to interact with Michael, it appears likely that the release of mixed personal data will adversely affect her right to respect for private and family life. As such, Michael's right to access must be restricted as regards mixed personal data relating to Gabrielle and such personal data must be excluded from the response, citing the specific adverse effect on the relevant right.

This interpretation conflates and confuses an indication of a contact preference with an adverse effect on *'the rights and freedoms of others'.*

Since this remains Tusla's current interpretation of Article 15.4 we see no reason to expect the data controllers covered by the provisions of the Birth Information and Tracing Bill if passed would change their behaviour in relation to Subject Access Requests made under the GDPR.

The *Access Requests Standard Operating Procedure Draft 2.2* demonstrates that TUSLA is not following (or possibly even not understanding) its own guidelines.

How can the Minister ensure that: a) TUSLA, the AAI and other data controllers will produce guidelines that are in line with EU law and the European Data Protection Board guidelines; and b) that such guidelines will be adhered to in the incredibly complicated alternative access system envisaged under his Bill?

We think it eminently foreseeable that this misinterpretation of GDPR Article 15.4 will continue to be used, i.e., withholding of personal data and attempting to funnel individuals into the more limited system created by the Bill. This will inevitably lead to complaints to the DPC and ultimately, litigation.

Having heard witness testimony from affected people on the poor implementation of GDPR rights, the Children's Committee recommended that:

> *In recognition of the dissatisfaction expressed by witnesses in their experience of TUSLA and the AAI to date the Minister should ensure that improvements in resourcing, culture and legal structure are realised within the relevant agencies and review progress in these areas*

in the medium term, with special emphasis on how the services under this Bill are being provided.[70]

The Committee also recommended the establishment of a new agency, but stated that in the interim, *'an independent oversight mechanism such as an Ombudsperson process, should be put in place to ensure additional support and reassurance for adopted persons and others accessing services'*.[71]

In light of the evidence set out in this section, we strongly believe that it is necessary to immediately create and resource a **dedicated unit of the Data Protection Commission, with a dedicated Advisory Committee** including those with direct experience of adoption, institutionalisation and State care, and human rights expertise, to ensure in relation to all institutional, adoption and 'care'-related records:[72]

(a) Cataloguing / identification of the location of all archives of historical institutional, adoption and care-related records;

(b) Major improvements in data controllers' practice, including through published guidance and proactive monitoring and investigating of such practice;

(c) The provision of accessible information and assistance to data subjects (bearing in mind the varied and particular needs of those affected);

(d) Efficient and transparent appeals from contested decisions of data controllers; and

(e) Detailed recommendations, following consultation with those affected, on future elements of the legislation to underpin the promised National Archive of Historical Care-Related Records.

Section 12 of the *Data Protection Act 2018* provides that:

> *…the functions assigned to the [DPC] by virtue of its being the supervisory authority for the purposes of the Data Protection Regulation and the Directive, the general functions of the Commission shall include…such other functions as may be assigned to it from time to time by or under any other enactment*.

[70] Recommendation 56. https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_children_equality_disability_integration_and_youth/reports/2021/2021-12-14_report-on-pre-legislative-scrutiny-of-the-birth-information-and-tracing-bill_en.pdf

[71] Recommendation 57.

[72] Please note that we inadvertently omitted this issue from our amendments sent to TDs and we will submit an additional amendment in advance of Report Stage.

6.5 MEMBERSHIP OF AAI BOARD

Since the Adoption Board was established in 1952, adoptive parents were always represented on the board (until the *Adoption Act 2010*).[73] However, adopted people and mothers have never been afforded such a position. It is crucial that the Minister ensures that voices of people affected by adoption are represented on the Board of the AAI, not only to help ensure that future adoptions are held up to the highest ethical scrutiny, but also to offer expertise in implementing adoption legislation and policy and in ensuring that adoption records are secured, maintained and interpreted correctly. The AAI and others have recognised the importance of meaningful consultation with affected people. For example, in June 2019 then chairperson of the AAI Dr Geoffrey Shannon appointed Claire McGettrick to the Research Sub-Committee of the Authority.[74] Furthermore, on 26th May 2021, Claire McGettrick was elected to the Board of Directors of the Irish Association of Social Workers as part of its response to the issues arising from the publication of the Mother and Baby Homes Commission Report. See our amendments to the *Adoption Act 2010*.

6.6 IMMUNITY

Section 59 provides immunity from damages claims to the Authority and the Child and Family Agency, along with their current and former Board members and employees in respect of the performance of their functions under this legislation, unless there was an act or omission committed in bad faith. It is important to bear in mind that (a) the functions carried out under the legislation will impact upon important basic rights of individuals, and (b) the State should be seeking to clearly distance itself from the wrongful, unaccountable conduct of adoptions in the past and their pernicious effects which presently continue. The State should now be seen to act with respect for the rule of law, rather than attempting to avoid accountability for its actions under the legislation. Moreover, Section 59 restricts affected people's rights under the Charter of Fundamental Rights to an effective remedy. See our amendments to Section 59. In attempting to provide immunity the Bill fails to comply with Article 47 of the Charter of Fundamental Rights of the EU: Right to an effective remedy and to a fair trial.

6.7 COMPLAINTS MECHANISM

As discussed in Section 7.1, under this Bill, TUSLA will be the primary operator of the tracing service. Given the level of dissatisfaction and lack of trust amongst affected people with regard to TUSLA management, it beggars belief that there is no provision under the Bill for a robust complaints mechanism.[75] See our amendments to the *Ombudsman (Amendment) Act 2012* at Section 10.5.

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[73] Please note that we inadvertently omitted this issue from our amendments sent to TDs and we will submit an additional amendment in advance of Report Stage.

[74] The Sub-Committee's role is to assist the AAI in achieving its goal to inform and influence adoption policy by undertaking and promoting adoption research in Ireland.

[75] Please note that we inadvertently omitted this issue from our amendments sent to TDs and we will submit an additional amendment in advance of Report Stage.

6.8 REVIEW OF THE ACT

Section 64 of the Bill states that the legislation will be reviewed after four years. This should be reduced to one year. The review should be independent, thorough, open to public submissions and subject to meaningful engagement with affected people and their advocates. See our amendments to Section 64 of the Bill.

6.9 REGISTRATION OF TUSLA AS AN ACCREDITED BODY

Since the *Adoption Act 2010* came into force the AAI has been the central authority and regulatory body for adoption in Ireland. While Section 125 of that Act **permits** TUSLA to engage in activities carried out by accredited bodies, the Agency is not considered to be an 'accredited body' as prescribed under the legislation. Therefore, TUSLA is not regulated by the AAI in its role as an adoption service provider. ARA has raised this matter with several ministers since 2011 and the matter remains unresolved. See our amendments to the *Adoption Act 2010*.

7. TRACING SERVICE

IN THIS SECTION:

7.1 TUSLA'S role in the tracing service
7.2 Research for tracing purposes
7.3 Tracing service for people adopted into Ireland from overseas

7.1 TUSLA'S ROLE IN THE TRACING SERVICE

We have grave concerns about TUSLA's involvement in the tracing service envisaged under the Bill. To be clear, we do not take issue with the vast majority of rank-and-file social workers currently working in TUSLA; rather, we are deeply troubled by the discriminatory and prejudicial policies emanating from TUSLA management. As discussed in Section 6.4 TUSLA management operates legally troubling and discriminatory practices, including defining adopted people's birth name as third party data and undertaking 'risk assessments' of all adopted people who request their records. Indeed, the Collaborative Forum of Former Residents of Mother and Baby Homes, which was established to advise the Government, has repeatedly stated that TUSLA should have no further role in adoption information and tracing. Witnesses who spoke to the Clann Project described TUSLA's attitude as discriminatory, mistrustful and obstructive. For example, Witness 16 said she felt TUSLA treated her '*as a threat to my mother, and that the social worker tried to keep us apart for as long as possible*'.[76]

[76] Clann Report, para 3.59

Furthermore, other aspects of TUSLA management's current tracing policies give us cause for significant concern. For example, in a page on its website entitled 'Outcomes of Tracing', the Agency sets out its views on the various scenarios that may occur as a result of a trace. The tone of the page is overwhelmingly pessimistic and often negative, focusing on the challenges associated with tracing, featuring words such as *'traumatic'*, *'fear'*, *'uncomfortable'*, *'blocked'*, *'painful'* and *'resent'*. Meanwhile the word 'positive' does not appear once: in fact, there is no acknowledgement of what a wonderful experience reunion with family members is for many people. Instead, TUSLA's emphasis is predominantly on secrecy, shame, preferences for no contact and other difficulties including the inability to locate the person sought or death of such a person. While it is important to manage one's expectations going into adoption reunion, TUSLA's negative tone is unhelpful in the extreme and undoubtedly serves to compound people's anxieties instead of relieving them.

The testimony of adopted people suggests that TUSLA's prejudicial attitude towards them has been present since the Agency was established. For example, Conor Bryan, an adopted person who recently spoke to RTÉ's *Liveline* radio programme, recalled his experience with TUSLA's tracing service in 2014. In a letter to Mr Bryan, TUSLA said they were *'inviting'* him to *'a Preparation for Search Meeting, which is the first step in commencing your search'*.[77] The letter provided details of the meeting and asked Mr Bryan to confirm his attendance or not. He was not informed that he had a right to proceed with his search without the *Preparation for Search Meeting*. The Clann Project spoke to Mr Bryan after his appearance on *Liveline* and he kindly shared some of the materials from the meeting with us. The *Preparation for Search Meeting* lasted for six hours, from 10:00am to 4:00pm with an hour for lunch. The day's schedule is set out as follows:

10:00am	*Welcome & Introduction to Regional Adoption Service*
10:15am	*Historical Perspective of Adoption – Current Legal Situation and Searching & Tracing Process. Questions.*
11:15am	*Coffee Break*
11:45am	*Discussion Groups – Case Study*
12:30pm	*Lunch*
1.30pm	*Experience of Search – Adopted Person*
2:30pm	*Discussion of Issues for Adopted People in Searching*
3:30pm	*The Next Steps*
	Close

One handout entitled *'Questions to think about?'* asked the following questions:

- *How do I define 'adoption reunion' and what do I hope to achieve by having one?*
- *Am I seeking a family in Reunion?*

[77] Correspondence from TUSLA dated 8th January 2014, provided to the Clann Project by Mr Bryan.

- *Am I seeking only information (medical, social, etc)?*
- *What do I see as my responsibilities for opening a door into the lives of other people?*
- *Am I prepared, once entering the search/reunion process, to be mindful of the other person's feelings?*
- *Am I prepared to be accepted or rejected by my birth sibling?*
- *If the birth parent is married, am I prepared for spousal acceptance or rejection?*
- *What obligations do I foresee when I enter this other family unit's world?*
- *How will this reunion affect everyone?*
- *Am I prepared to meet a birth family, who wants a relationship?*
- *Am I emotionally prepared if they are disinterested in me?*
- *How do I envisage the role of the birth family in my life? As family? As extended family? A friend? Not really anyone to be included in a meaningful way?*
- *Am I open to meeting siblings? Grandparents? Uncles? Aunts?*
- *Am I able to accept possible 'total acceptance' and not feel bitter that I am being received as a 'long lost child'?*
- *Will reunion hold consequences for my adoptive parents and sibling? If so, what possible consequences could there be?*

From the outset, TUSLA has questioned the motives of the adopted people in attendance at the meeting (*How do I define 'adoption reunion' and what do I hope to achieve by having one? Am I seeking a family in Reunion?).* The attendees at a *Preparation for* ***Search*** *Meeting* (who would presumably have declined if this was not their intention) are asked if they only want information (*Am I seeking only information (medical, social, etc)?).* The questions posed by TUSLA remind adopted people that they are outsiders and warn them that they have responsibilities towards their family of origin who are so distant they are described as *'other people'* (*What do I see as my responsibilities for opening a door into the lives of other people?)*. Adopted people are told they must be conscious of the feelings of others, which implies that other people's feelings are more important (*Am I prepared, once entering the search/reunion process, to be mindful of the other person's feelings?).* They are invited to consider whether they are prepared for acceptance or rejection by their brother or sister (*Am I prepared to be accepted or rejected by my birth sibling?)* An adopted person will only read *'rejected'* in TUSLA's question, however, it is also worth bearing in mind that the Oxford Dictionary of English defines 'acceptance' as:

the process or fact of being received as adequate, valid, or suitable: you must wait for acceptance into the village.[78]

Adopted people are also asked to prepare for acceptance or rejection from the spouse of their mother or father (*If the birth parent is married, am I prepared for spousal acceptance or rejection?).* In the next question adopted people are reminded again that they are outsiders that they have obligations to this *'other family unit'* (*What obligations do I foresee when I enter this other family unit's world?)*. Furthermore, adopted people are expected to take responsibility for considering how *'everyone'* will be affected by this reunion (*How will this reunion affect everyone?).*

TUSLA manages to put a negative spin even on the matter of positive acceptance by one's family of origin (*Am I prepared to meet a birth family, who wants a relationship?),* and in the next question adopted people are reminded that their blood relatives may have no interest in them (*Am I emotionally prepared if they are disinterested in me?).* Continuing its theme of putting negative connotations on positive outcomes, TUSLA asks adopted people to consider the bizarre question of whether '*total acceptance'* might make them feel *'bitter'* (*Am I able to accept possible 'total acceptance' and not feel bitter that I am being received as a 'long lost child'?)* The first section of the handout closes with a question familiar to most adopted people: they are asked not only will there be consequences of reunion for their adoptive family but also what those consequences might be (*Will reunion hold consequences for my adoptive parents and sibling? If so, what possible consequences could there be?).*

Under a heading entitled *'The Possibility of Rejection',* TUSLA reminds adopted people that they may have to *'settle'* for *'basic questions'* (*Am I prepared to settle for perhaps basic questions only, but not a relationship?*). They are then further reminded that their family of origin may not be interested in meeting them at all *(Am I emotionally prepared with a back-up support system in case I find the other person is not interested in meeting me?).*

Under another heading entitled *'General questions'* adopted people are invited to think about their views on adoption and whether these views will affect their reunion (*What are my basic views on Adoption? How will these views affect my reunion?).* This question is immediately followed by a query as to whether the adopted people in attendance are angry towards their parents *(Do I have angry feelings when I think of my birth parent?).* The message here is clear: negative feelings about adoption itself are inappropriate, and any anger an adopted person feels (even generally) will affect their reunion.

[78] Catherine Soanes and Angus Stevenson (2010) *Oxford Dictionary of English*. Oxford: Oxford University Press.

The document closes by inviting adopted people to not only examine all of the various *'emotional states'* they might experience in their reunion but they are also told to assess each of those states **in relation to themselves as people** (*Have I examined all the possible emotional states that I might end up experiencing, examining each of them in relation to myself as a person? How do I deal with anger? Joy? Frustration? Disappointment? Happiness? Fear?).*

Another handout entitled *'What Happens Next'* states:

> *If you wish to proceed with your search your case will be allocated to a Social Worker who will contact you directly.*
>
> *If you do not wish to proceed or are unsure at this time, your case will not be allocated until we hear from you.*

Based on our experience over the past two decades, when an adopted person decides to approach the relevant authorities to enquire about initiating a trace, in most cases, they will likely have made up their minds about wanting to contact their family of origin. The matter of considering whether they wish to trace their family is something adopted people tend to discuss with their loved ones or other adopted people and not adoption agencies. In our view it is highly likely that most attendees at TUSLA's *Preparation for Search Meetings* have already made up their minds. This interference by TUSLA in the private lives of adopted people and their families of origin is highly inappropriate and intrusive. It is not surprising that Conor Bryan's view of the purpose of the meeting was thus*:*

> *I remember the theme of the preparation…the central message was 'maybe you shouldn't do this, I don't think you should do this'…we're all there getting ready to start this exciting journey and…we want to do this and [there is a] hidden message kind of not to.*

Mr Bryan also said on *Liveline* that during the *Preparation for Search Meeting*, on a whim, the social worker told him and the other participants, *'you see that room over there, your files are in that room'*. Mr Bryan approached the social worker after the meeting and said to her, *'so you're telling me my adoption file is in that room there and I can't touch it, I can't get it?*' The social worker replied, *'no, no, sorry, that's the law, you're not entitled to it'*.

On its 'Outcomes of Tracing' page, in advance of contact, TUSLA instructs affected people to *'prepare carefully for a meeting and to consult with the intermediary facilitating the meeting'*. TUSLA appears to offer no alternative to this intrusive approach, and it is unclear whether people who wish to be in direct contact with each other with no interference from the Agency are facilitated in doing so. **Where people wish to be put in direct contact with each other with no further intervention or assistance from TUSLA, the AAI or any other State agency, they should not obstructed from availing of this option.**

In its FAQs and its recommendations on information and tracing, The Mother and Baby Homes Commission of Investigation states that:

> *There has been quite vitriolic criticism of the Child and Family Agency (Tusla) and its approach to providing information to adopted people. This criticism is unfair and misplaced. Tusla is implementing the law and has no choice about doing so. The problem is not with Tusla; it is with the law. Any other agency providing information and tracing services would be in the same position.*

We completely disagree. There is no law requiring TUSLA to subject adopted people to its *Preparation for Search Meetings*; rather, the Agency designed this intrusive, insulting mechanism of its own accord. Moreover, as discussed in Section 6.4 TUSLA's interpretation of data protection law is deeply problematic.

Despite myriad complaints from affected people and despite concerns expressed by advocates, the Minister nonetheless envisages that TUSLA will be the first port of call for affected people who wish to avail of a tracing service under the Bill.[79] Section 32 of the Bill states that:

> *The Agency and the Authority shall, in accordance with this Act and on application to the Agency…provide a tracing service.*

TUSLA has breached the trust of people affected by forced family separation, and they should not be forced to use the Agency's services if they do not wish to do so. Some affected people may not wish to use AAI's tracing service either and their wishes must also be taken into consideration. Affected people were forcibly separated from each other because of the State's failure to protect them, and the State must now do everything in its power to ensure that the services it puts in place do not cause further harm.

Although Section 32 states that both TUSLA and the AAI will provide a tracing service, **that section does not set out how an affected person can opt to use the AAI's service instead of TUSLA's.** We note that under Section 33, the Minister *'may, by direction in writing, authorise the Agency or the Authority to conduct a trace of an individual, or a class of persons'* but only where the Minister is *'satisfied that it is necessary, and in the public interest, for a trace to be conducted in respect of the individual or class of individuals concerned'*. How the Minister will apply this test is unknown and not provided for in the Bill. It is unclear whether this is the mechanism by which people who do not wish to avail of TUSLA's services can instead go to the AAI. The Bill's *Explanatory Memorandum* provides no further information on the matter. See our amendments to Part 5 of the Bill.

[79] Please note that we inadvertently omitted this issue from our amendments sent to TDs and we will submit an additional amendment in advance of Report Stage.

7.2 RESEARCH FOR TRACING PURPOSES

All research relating to adoption traces **must be carried out by qualified and experienced genealogists and not social workers.** Worryingly, Section 34 of the Bill authorises TUSLA and the AAI to request information from several data controllers for the purpose of facilitating a trace. Included amongst the data controllers listed at Section 34(6) are:

> *(g) a diocese or parish of the Roman Catholic Church;*
> *(h) a diocese or parish of the Church of Ireland;*

These interactions are an unnecessary breach of the relevant people's privacy. The inclusion of church representatives in Section 34(6) is particularly egregious considering that the Bill fails to name religious orders or other entities as data controllers. Moreover, it does not seem to have occurred to the Minister and his Department that some of the church representatives whom TUSLA and the AAI are authorised to approach may have been involved in adoptions, both legal and illegal. Subsections (g) and (h) of Section 34(6) must be deleted, and instead, these data controllers must be obliged to furnish the AAI with all adoption records they hold so they can be made available to affected people. While we appreciate that there may be some instances where a person is difficult to find, in the vast majority of cases, a trained genealogist will be able to locate someone through discreet measures using public records and other information in the public domain (see Section 1 of this Briefing Note). Social work has a fundamental role in Irish society, however, social workers do not have the skills or training required to be involved in tracing research. To ensure that the confidentiality of affected people is protected, where interactions such as those described under Section 34 are genuinely required (and only after all other non-intrusive avenues have been exhausted), a person who receives a request for information must be required to sign a non-disclosure agreement. See our amendments to Part 5 of the Bill.

7.3 TRACING SERVICE FOR PEOPLE ADOPTED INTO IRELAND FROM OVERSEAS

Section 36 of the Bill makes certain provisions for a tracing service for people who were adopted from overseas into Ireland. It is to be welcomed that adult adopted people in this cohort are no longer being completely ignored by the State. However, Section 36 (a mere 184 words in its entirety) only states that adopted people born outside the State who wish to have contact or who wish to obtain '*further information in relation to his or her birth, early life, care or any other matter or medical information relating to the adopted person or his or her genetic relative' 'may apply'* to the AAI for a tracing service. When the AAI receives such an application, it contacts the authority in the person's country of origin and requests them to conduct a trace. From there, the matter appears to be left in the hands of the authorities in the country of origin, with no further assistance from the Irish State. The Bill makes no provision for the adopted person's records to be provided to them (including records held by the State and the AAI). Neither does the Bill take into account that there may have

been illegalities involved in adoptions into Ireland from elsewhere, nor does it take into account other factors, such as the need for translation and DNA services. The adopted people in this cohort deserve better than what the Government has provided in this Bill; they need a dedicated piece of legislation with a statutory tracing and information service that takes into account the circumstances surrounding intercountry adoption, including the need for translation services. With this in mind we have made just two amendments to Section 36, requiring the AAI to provide all records to the adopted person, but we recognise that a great deal more needs to be done.

8. PUBLIC INFORMATION CAMPAIGN

Section 54 of the Bill states that the AAI must hold a public information campaign and other measures it considers appropriate, to promote awareness of the new CPR and its purpose, the information that is available under the legislation and the restriction of certain rights and obligations under the GDPR as set out in Section 62 of the Bill. If this Bill is amended to remove the harmful restrictions on affected people's rights, the public information campaign has the potential to be a hugely positive event, marking an end to the secrecy around adoption in Ireland. The role of the CPR and access to information must be communicated clearly and affected people's fundamental Right of Access to personal data must also be explained. It is particularly important that the restriction of GDPR rights and obligations are properly communicated in the campaign (see Section 4.8 for a discussion of these restrictions). Most importantly, the tone and content of the campaign must not compound the shame and secrecy around adoption and therefore it is crucial that adopted people and parents are consulted on the design of the campaign.

The Government must play its part in cultivating a new discourse of truth, accountability, understanding and respect. The public information campaign presents a unique opportunity in this regard and it should be framed in positive terms: to let mothers know that they no longer need to bear the burden of secrecy and shame, to let adopted people know that they are equal in the eyes of the law, to let relatives of the deceased know that they can finally learn what became of their family member. The impact of public empathy cannot be underestimated. See our amendments to Section 54.

9. COUNSELLING AND 'SUPPORT'

IN THIS SECTION:

9.1 Assistance and support (Section 57)
9.2 Counselling (Section 63)

9.1 ASSISTANCE AND SUPPORT (SECTION 57)

Section 57(2) of the Bill states that TUSLA and the AAI *'shall, insofar as practicable, provide assistance'* to a person who wishes to apply for their birth certificate and information, avail of the tracing service or who wishes to apply to register with the CPR. Section 57(2) states that TUSLA or the AAI:

> *…may provide such support* ***as it considers appropriate*** *to a person who makes an application referred to in subsection (1), which support may include—*
> (a) *support relating to the interpretation and understanding of information and records provided on foot of the application, and*
> (b) *counselling and support of the applicant following receipt by him or her of the information or records referred to in paragraph (a).*

The 'support' referred to in subsection (a) would be more appropriately referred to as 'assistance' and such assistance should be provided by qualified archivists and not social workers. Subsection (b) should be deleted because whether counselling is appropriate in any given situation is a matter for the affected person themselves to decide, and not TUSLA or the AAI. Instead, all affected people seeking counselling should have an explicit right under Section 63 of the Bill. See our amendments to Section 57.

9.2 COUNSELLING (SECTION 63)

Under Section 63, parents who express a preference for no contact with their adult child have an explicit right to counselling; however, the Bill does not require counselling support to be available to other affected people. Section 63 makes the availability of counselling support mandatory for parents who express a preference for no contact with their adult child. On the other hand, Section 63 simply allows TUSLA to arrange counselling support for other affected people if TUSLA so wishes.

For the same reasons we set out in Section 7.1, we have grave concerns about the prospect of counselling being provided by TUSLA. In our experience over the past two decades, it is the lack of access to information that causes the most distress amongst affected people. Given that TUSLA management is responsible for a large proportion of this distress, it is highly inappropriate that the Agency is involved in the provision of counselling for those who wish to avail of it. See our amendments to Section 63.

10. OTHER AMENDMENTS

IN THIS SECTION:

10.1 The right to know you are adopted
10.2 Amendment of the *Status of Children Act 1987*
10.3 Amendment of the *Commissions of Investigation Act 2004*
10.4 Amendment of the *Residential Institutions Redress Act 2002*
10.5 Amendment of the *Ombudsman (Amendment) Act 2012*

10.1 THE RIGHT TO KNOW YOU ARE ADOPTED

The State should ensure that it is every adopted person's right to know they are adopted, by amending existing legislation to remove any provisions that hide an adopted person's status. As evidenced in the witness testimony set out in the Clann Report, many adopted people grew up not knowing they are adopted, only to discover this fact later in life when, for example, trying to obtain a passport. See our amendments at Section 67.

10.2 AMENDMENT OF THE *STATUS OF CHILDREN ACT 1987*

Section 35 (1) of the *Status of Children Act 1987* states that:

> *(a) A person (other than an adopted person) born in the State, or*
> *(b) any other person (other than an adopted person),*
>
> *may apply to the Court in such manner as may be prescribed for a declaration under this section that a person named in the application is his father or mother, as the case may be, or that both the persons so named are his parents.*

This is blatant discrimination against adopted people, enshrined in an act designed to abolish the shame associated with illegitimacy. As part of the redress measures, the State should amend Section 35 (1) of the *Status of Children Act 1987* so that adopted people (whether legally or illegally adopted) are included in the statutory right to a declaration of parentage. See Section 68 of our amendments.

10.3 AMENDMENT OF THE *COMMISSIONS OF INVESTIGATION ACT 2004*

The current section 11(3) of the *Commissions of Investigation Act 2004* criminalises the disclosure by **any person** of evidence or documents given to the Commission in private, on pain of a maximum penalty of a €300,000 fine and/or 5 years' imprisonment.

We believe that this provision, on its face, is in clear violation of the right to freedom of expression of those who experienced abuse, who should be enabled if they wish to contribute testimony or

documents to the national historical record or otherwise to publish their accounts. Furthermore, as recommended above, this provision should be amended so that all personal data given to the Commission in private is readily available to the individuals who provided it as required by the GDPR, and so that State and other administrative records are publicly available (anonymised as necessary). See Section 69 of our amendments.

10.4 AMENDMENT OF THE *RESIDENTIAL INSTITUTIONS REDRESS ACT 2002*

The colloquially named 'gagging order' in section 28(6) of the *Residential Institutions Redress Act 2002* has caused untold harm to survivors of industrial schools through its 'chilling effect', despite the provision never actually being used to prosecute a survivor for speaking in public of the matters which they revealed to the Redress Board. For more on the impact of the gagging order, please see the 2017 report of the voluntary organisation *Reclaiming Self* to the UN Committee Against Torture (in particular p17, 23-24), and Mick Peelo's two-part documentary for RTE in March 2020, *Redress*.

Section 28(6) states as follows:

> *A person shall not publish any information concerning an application or an award made under this Act that refers to any other person (including an applicant), relevant person or institution by name or which could reasonably lead to the identification of any other person (including an applicant), a relevant person or an institution referred to in an application made under this Act.*

Under section 28(9), contravention of section 28(6) is a criminal offence with a maximum penalty under section 34 of a €25,000 fine and/or 2 years' imprisonment. In our view and the view of many lawyers whom we have consulted, this section on its face contravenes the guarantee of freedom of expression in Article 40.6.1 of the Constitution and Article 10 ECHR. It is unnecessary and disproportionate given the other legal protections available to alleged wrongdoers (e.g. defamation law and the protection from civil suit that the RIRA 2002 provides once a survivor has accepted a settlement).

Section 28(6) of the RIRA 2002 must be amended to clarify that 'a person' refers to those working for the RIRB and Review Committee and not survivors. See Section 70 of our amendments.

10.5 AMENDMENT OF THE *OMBUDSMAN (AMENDMENT) ACT 2012*

We have put forward two amendments to the *Ombudsman Act 2012*. The first adds Tusla, the AAI and any other entity operating under this Bill (if passed) to the First Schedule of that act. The second amendment deletes a subsection of the *Ombudsman Act* schedule that exempts the AAI from the Ombudsman Act in relation to the making of an adoption order or the recognition of an intercountry adoption effected outside the State. **Please note that the second amendment was made in error,**

as it is imperative that the AAI can uphold its role in ensuring that all adoptions are ethical and above board. See our amendments to Section 71 of the Bill.

APPENDIX ONE: LIST OF 182 ENTITIES

LIST OF INSTITUTIONS, AGENCIES AND PERSONNEL INVOLVED IN SEPARATING UNMARRIED MOTHERS FROM THEIR CHILDREN

Compiled by
Claire McGettrick

With additional input from
Susan Lohan, Mari Steed, Dr Maeve O'Rourke,
Assoc Prof Katherine O'Donnell and Prof James Smith.

We are also grateful to the Adoption Authority of Ireland and Dr Sean Lucey for information which assisted in compiling this database.

When referencing this list please cite as follows:

Claire McGettrick et al. (2022) *List of Institutions, Agencies and Personnel Involved in Separating Unmarried Mothers from their Children.* Dublin: Justice for Magdalenes Research and Adoption Rights Alliance.

This database is updated on an ongoing basis.
Corrections and additions are welcome at: info@clannproject.org

Last updated 27th January 2022

	Name of agency/institution/Individual	On MBH Commission ToR?	Location
1	[Redacted] Upper Leeson Street, Dublin 2	No	[Redacted] Upper Leeson Street, Dublin 2
2	[Redacted] South Circular Road Dublin 8	No	[Redacted] South Circular Road Dublin 8
3	[Redacted] North Circular Road	No	[Redacted] North Circular Road
4	[Redacted] New Cabra Road, D7	No	[Redacted] New Cabra Road, D7
5	[Redacted] Marlborough St	No	[Redacted] Marlborough St
6	[Redacted] North Circular Road	No	[Redacted] North Circular Road
7	[Redacted] North Circular Road	No	[Redacted] North Circular Road
8	[Redacted] Cabra Road	No	[Redacted] Cabra Road
9	Adoption Board (now the Adoption Authority of Ireland)	No	Shelbourne House, Shelbourne Rd, D4
10	Aisleagh Orphanage,	No	Killary Bay, Co. Galway
11	Ally	No	Dublin?
12	Ard Mhuire	Yes	Dunboyne, Co. Meath
13	Arus Mhuire	No	Dungarvan
14	Avoca House	No	Wicklow
15	Balrothery Board of Assistance	No	5 Parnell Sq, Dublin 1
16	Ballyogan House	No	Ballyogan Road, Carrickmines, Dublin
17	Belmont Flatlets	Yes	Belmont Avenue, Dublin 4
18	Bethany House	Yes	Blackhall Place, Dublin 7/Orwell Road, Rathgar
19	Bird's Nest	No	Dun Laoghaire

	Name of agency/institution/Individual	On MBH Commission ToR?	Location
20	Braemar House Orphanage	No	Cork
21	Brother's House	No	Bruff, Co. Limerick
22	Burlington Clinic	No	Not available (closed 1962)
23	Cairdeas Adoption Society	No	Dublin 2
24	Carlow County Home	No	Carlow
25	Cascia Nursing Home	No	13 Pembroke Road, Dublin 2
26	Catholic Children's Society aka Crusade of Rescue	No	73 St Charles Square, London W10 6EJ
27	Catholic Women's Aid Society	No	14 Browne St, Cork
28	Cavan County Home (St Feilim's)	No	Cavan
29	Children's Home	No	Kiltiernan, Co Dublin
30	Children's Home Dollymount	No	Dollymount
31	Children's Welfare League	No	Brown Street, Cork.
32	Church of Ireland Social Services	No	Molesworth St, then Belgrave Rd
33	Clann	No	Galway
34	Clare County Home	No	Ennis
35	Clifton Nursing Home , Monkstown	No	Monkstown
36	Connemara Orphan Nurseries	No	Galway
37	Cork City County Home (St Finbarr's)	Yes	Cork City
38	Cork Health Authority/Cork Board of Health	No	Cork

	Name of agency/institution/Individual	On MBH Commission ToR?	Location
39	Cork Protestant Adoption Society	No	Cork
40	Dr [Redacted]	No	[Redacted] Dublin 2
41	Cunamh	No	30 South Anne St.
42	Cura	No	30 South Anne St.
43	Daisy Hill Newry	No	Newry
44	Dr [Redacted]	No	[Redacted] Dublin 12
45	Donegal County Home (St Joseph's)	Yes	Stranorlar
46	[Redacted]Nursing Home	No	[Redacted] Nursing Home, [Redacted] Co. Wexford
47	Dublin Health Authority	No	Dublin
48	Eglinton House/Denny House	Yes	Eglinton Road, Dublin 4
49	Emmanuel Home/Avoca Manor	No	Rathgar/Wicklow
50	Galway County Home	No	St Brendan's Home, Loughrea
51	Glensilva Nursing Home	No	[Redacted] Monkstown Co Dublin
52	Glenvera Nursing Home (Stella Maris)	No	Wellington Road, Cork
53	Canon [Redacted]	No	Galway
54	[Redacted] Nursing Home	No	[Redacted] South Mall, Cork
55	Greenmount	No	Cork
56	Miss [Redacted]	No	[Redacted] Pearse Street, Dublin

	Name of agency/institution/Individual	On MBH Commission ToR?	Location
57	Hatch Street Nursing Home	No	[Redacted] Hatch St Dublin 2
58	Mrs [Redacted]	No	[Redacted] Cabra Park
59	Home for Fallen Women	No	2 Northcote Avenue, Kingstown
60	Holles St/National Maternity Hospital	No	National Maternity Hospital, Holles Street, Dublin 2
61	Jewish Agency for Adoption & Fostering in Ireland	No	37 Dunville Ave, Ranelagh, Dublin 6
62	[Redacted]	No	St Rita's Nursing Home
63	Kerry County Home	No	St Ita's Home, Killarney
64	Kildare County Home	No	St Vincent's Hospital & County Home, Athy
65	Dr & Mrs [Redacted]	No	[Redacted] Mountjoy Square, Dublin 1
66	Kilrush Mother and Baby Home	Yes	Cooraclare Rd
67	Lansdowne Rd	No	Lansdowne Rd
68	Laois County Home	No	Mountmellick
69	Dr [Redacted]	No	[Redacted] East Wall Road, Dublin 3
70	Leinster Nursing Home	No	Not available
71	Letrim County Home	No	St Joseph's, Carrick-on-Shannon
72	Limerick	No	County Hospital, Croom
73	Limerick Catholic Adoption Society	No	St Camillus' Hospital Limerick
74	Limerick City Home	No	Limerick City

	Name of agency/institution/Individual	On MBH Commission ToR?	Location
75	Limerick County Board of Public Health & Assistance	No	Limerick
76	Limerick County Home	No	St Ita's, Newcastle-West
77	Longford County Home	No	St Joseph's, Longford
78	Louth County Home	No	County Home, Drogheda
79	Magdalen Asylum	No	Forster Street, Galway
80	Marie Celine Nursing Home	No	Convent of Mercy Middleton, Cork
81	[Redacted] Clinic (aka Mrs [Redacted])	No	[Redacted] Howth Road, Dublin 5
82	Mayo County Home	No	Castlebar Co Mayo
83	[Redacted] Nursing Home	No	Convent Road, Longford, [Redacted]
84	Meath County Home	No	Lourdes Hospital & County Home, Trim
85	Mercy Convent	No	Tralee
86	Miss [Redacted]'s Home	Yes	[Redacted] Northbrook Road, Dublin 6
87	Monaghan County Home	No	St Mary's Hospital & County Home, Castleblayney
88	Monastery of Our Lady of Charity Magdalene Laundry	No	Sean McDermott Street (formerly Gloucester Street), Dublin 1.
89	Mrs [Redacted]'s Nursing Home	No	[Redacted] Cork
90	Mrs [Redacted] (nursing home)	No	[Redacted] Vernon Avenue, Clontarf
91	Mrs [Redacted]'s Home	No	Grattan St
92	Dr [Redacted]	No	Unknown, associated with St Rita's
93	Nazareth House, Donegal	No	Fahan Co Donegal

	Name of agency/institution/Individual	On MBH Commission ToR?	Location
94	Nazareth House, Sligo	No	Sligo
95	Nazareth House, Wales	No	Wales
96	North Cork County Home	No	Mallow (or Fermoy?)
97	[Redacted] Nursing Home	No	[Redacted] Eccles Street, Dublin 7
98	Mrs [Redacted]	No	Not available
99	Mrs [Redacted]	No	[Redacted] Ormond Road Drumcondra
100	Offaly County Home	No	Tullamore
101	Ossory/Challenge Adoption Society	No	Kilkenny
102	PACT	No	Dublin
103	Percy Place Nursing Home (aka Stella Maris Nursing Home)	No	39 Percy Place Dublin 2
104	Portobello Nursing Home	No	Dublin
105	Prague Nursing Home	No	7 Greenmount Road, Terenure, Dublin 6W
106	Miss [Redacted]	No	[Redacted] Rathfarnham Road
107	Racefield Nursing Home	No	Lower Mounttown Road, Dun Laoghaire, Co Dublin
108	Fr [Redacted]	No	Mullingar
109	Regina Coeli Hostel	Yes	Dublin
110	Mrs [Redacted]	No	[Redacted] Marlborough Road

	Name of agency/institution/Individual	On MBH Commission ToR?	Location
111	Roscommon County Home	No	Roscommon
112	Rotunda Girls Aid Society	No	82 Marlborough St, now 1A Cathedral St
113	Sacred Heart Home, Bessborough	Yes	Blackrock, Cork
114	Sancta Maria Private Nursing Home	No	South Terrace Cork
115	Sandymount (All Saints Home)	No	Rathmines
116	Sean Ross Abbey	Yes	Roscrea, Co. Tipperary
117	Sligo County Home	No	Sligo
118	Mrs [Redacted]	No	[Redacted] North Circular Road, Dublin 7
119	St Anne's Adoption Society	No	34 Paul St Cork
120	St Anthony's Nursing Home	No	15 Howth Road, Clontarf, Dublin 3
121	St Attracta's Adoption Society	No	Sligo
122	St Brigid's Adoption Society	No	Eccles St, later Iona Road
123	St Brigid's Nursing Home	No	81 or 83 North Circular Road
124	St Catherine’s Adoption Society	No	Ennis, Co. Clare
125	St Clare's Adoption Society	No	Stamullen, Co. Meath
126	St Gerard's	No	Herbert Avenue, D4
127	St Gerard's (39 Mountjoy Sq)	Yes	39 Mountjoy Square
128	St Helier's Nursing Home	No	450 North Circular Road, Dublin 7

	Name of agency/institution/Individual	On MBH Commission ToR?	Location
129	St John's Adoption Society	No	3 George's St Waterford
130	St Joseph's Babies' Home	No	Stamullen
131	St Joseph's Nursing Home	No	78 Lwr Drumcondra Road, Dublin 3
132	St Joseph's Nursing Home	No	1 St Laurence Road Clontarf Dublin 3
133	St Jude's Nursing Home	No	332 Howth Road Dublin 3
134	St Kevin's Adoption Society	No	Waterford
135	St Kevin's Institution/Hospital, James Street	Yes	James's St
136	St Louise's Adoption Society	No	1 James's Street
137	St Mary Magdalen's, Floraville Road, Donnybrook, Dublin.	No	Donnybrook
138	St Mary's Adoption Society	No	Killarney, Co. Kerry
139	St Mary's Refuge, High Park, Grace Park Road, Drumcondra, Dublin.	No	Drumcondra
140	St Mary's, Cork Road, Waterford (Magdalene Laundry)	No	Waterford
141	St Mary's, New Ross, Wexford. (Magdalene Laundry)	No	Wexford
142	St Mary's, Pennywell Road, Limerick. (Magdalene Laundry)	No	Limerick
143	St Mary's, Sunday's Well, Cork. (Magdalene Laundry)	No	Cork
144	St Mura's Adoption Society	No	Letterkenny Co Donegal
145	St Nicholas' Adoption Society	No	Galway
146	St Patrick's Guild	No	Haddington Rd/Middle Abbey St/30 Mountjoy Square
147	St Patrick's Home	Yes	Navan Rd

	Name of agency/institution/Individual	On MBH Commission ToR?	Location
148	St Patrick's Infant Dietetic Hospital	No	Blackrock, Dublin
149	St Patrick's Refuge, Crofton Road, Dun Laoghaire, Co. Dublin.	No	Dun Laoghaire
150	St Peter's/Manor House	Yes	Castlepollard, Co. Westmeath
151	St Philomena's	No	Stillorgan
152	St Philomena's (unconfirmed)	No	Leeson St
153	St Rita's Nursing Home	No	68 Sandford Rd
154	St Vincent's, St Mary's Road, Peacock Lane, Cork. (Magdalene Laundry)	No	Cork
155	St. Joseph's Convent of Mercy, Moate, Co. Westmeath	No	Moate
156	St. Mary's	No	38 Vernon Avenue
157	St Michael's Private Nursing Home	No	Crofton Road, Dun Laoghaire, Co. Dublin
158	St. Monica's	No	17 Lower Mount Street
159	Stella Maris	No	Wellington Road, Cork
160	Stella Maris Nursing Home ([Redacted])	No	17 Earlsfort Tce D2
161	Sunbeam House	No	Bray
162	Sunshine Children's Home	No	Stillorgan
163	The Boy's Home	No	Grand Canal St Dublin
164	The Castle, Newtowncunningham	Yes	Newtowncunningham, Co. Donegal
165	The Children's Fold	No	Lurgan St/Townsend St
166	The Cottage Home	No	Tivoli Rd Dun Laoghaire

	Name of agency/institution/Individual	On MBH Commission ToR?	Location
167	The Eilliot Home	No	Charlemont St., Dublin
168	Thomastown County Home (St Columba's)	Yes	Thomastown
169	Tipperary North Riding County Home	No	Hospital of the Assumption & County Home, Thurles
170	Tipperary South Riding County Home	No	St Patrick's Hospital & County Home, Cashel
171	Tivoli Road Nursing Home	No	345 Tivoli St. South , Dun Laoghaire Co Dublin
172	Mrs [Redacted]	No	93 Lr Baggot Street Dublin 2
173	Tuam (St Mary's Children's Home/Bon Secours Sisters)	Yes	Tuam Co Galway
174	Vevey Nursing Home	No	101 Connaught Street Phibsboro Dublin 7
175	Waterford County Home	No	Dungarvan
176	West Cork County Home	No	Mount Carmel, Clonakilty
177	Westbank Children's Home	No	Greystones, Co. Wicklow
178	Westmeath County Home	No	St Mary's Hospital & County Home, Mullingar
179	Westworth Nursing Home	No	23 Upper Leeson St Dublin 2
180	Wexford County Home	No	St John's Hospital & County Home, Enniscorthy
181	Wicklow County Home	No	St Colman's Hospital & County Home, Rathdrum
182	Woodside Nursing Home	No	72 Vernon Avenue Clontarf Dublin 3

APPENDIX TWO: COMMITTEE STAGE AMENDMENTS

PLEASE NOTE: Amendments concerning definitions of information and information provision are split into two groups as follows:

Amendment Group 1

6. Deletes all redefinitions and categories of information
7. Inserts one section spelling out how to obtain personal data[80]

Amendment Group 2

8. Strengthens the government's redefinitions of information in the Bill

We have also added to the definition of personal data, spelling out the kinds of information that are personal data in this area.

Please note that we inadvertently omitted some matters from our amendments, while in other cases, **because of the Government's haste in progressing this Bill, we discovered several issues after the deadline for amendments.** We will submit additional amendments in advance of Report Stage.

PREAMBLE

In page 7 at line 5, to delete 'further and better'.

In page 7 at line 6, to insert 'their personal data and' before 'information concerning their origins'.

In page 7 at line 7, to delete 'incorrect birth registrations' and replace with 'illegal adoptions and illegal birth registrations'.

In page 7 at line 9, to delete 'where such persons are deceased'.

In page 7 at line 9, to insert 'to make provision for certain parents and relatives in respect of access to records'.

In page 7 at line 9, to delete 'in certain circumstances'.

In page 7 at line 15, to delete 'certain' and replace with 'all available'.

In page 7 at line 15, to insert 'forced family separation' after 'birth'.

In page 7 at line 17, to delete 'incorrect birth registrations' and replace with 'illegal adoptions and illegal birth registrations'.

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[80] Please note that we inadvertently omitted this issue from our amendments sent to TDs and we will submit an additional amendment in advance of Report Stage.

In page 7 at line 15, to insert ‘to provide for arrangements and assistance regarding citizenship, repatriation and home visits by certain persons’.

In page 7 at line 18, to insert:

> ‘to amend the Status of Children Act 1987; to amend the Commissions of Investigation Act 2004; to amend the Residential Institutions Redress Act, 2002’ after ‘to amend the Adoption Act 2010; to amend the Ombudsman (Amendment) Act 2012’.

PART 1

SECTION 2: INTERPRETATION

Clann Project insertion: Definition of ‘administrative record’

(See Section 4.6 of our Briefing Note)

In page 8 at line 9 to insert:

> ‘administrative record’ means a record containing documentation of the organisation, functions, policies, decisions and procedures of an institution, organisation. Administrative records can include but are not limited to:
>
> (a) Records of admission and discharge
> (b) Photographs
> (c) Minutes of meetings
> (d) Diaries
> (e) Reports
> (f) Annual reports
> (g) Internal publications
> (h) External publications
> (i) Policy and procedure manuals
> (j) Staff records
> (k) Financial records
> (l) Maintenance payment records
> (m) Death and burial records
> (n) Log books
> (o) Visitors books
> (p) Correspondence
> (q) Punishment books
> (r) Baptismal and confirmation records
> (s) Weekly, monthly, quarterly and annual returns
> (t) Records concerning daily life

(u) Ephemera, e.g., fundraising materials, signs, books.

Clann Project insertion: Definition of 'Adoption Advisory Group'

(See Section 6.2 of our Briefing Note)

In page 8 at line 11 to insert:

> 'Adoption Advisory Group' means the advisory group convened by the Minister as prescribed in Section 72 of this Bill.

Definition of 'adopted person'

(See Sections 3.3 and 3.4 of our Briefing Note)

In page 8 at line 15 to insert 'born in the State and placed for adoption outside the State and whose adoption was effected outside the State'.

In page 8 at line 15 to insert 'born in the State and placed for adoption outside the State'.

In page 8 at line 20 to insert 'a person who was subject to an illegal birth registration'.

In page 8 at line 20 to insert 'a person who was otherwise illegally adopted'.

Definition of 'care arrangement'

(See Section 4.3.1 of our Briefing Note)

Amendment Group 1: Definition of 'care arrangement'

In page 9 at line 25 to delete the definition of 'care arrangement' in its entirety.

Amendment Group 2: Definition of 'care arrangement'

In page 9 at line 24 to insert 'care provided by the mother, father or guardian of the child'.

In page 9 at line 24 to insert 'any institution, agency, organisation or individual involved in the separation of mothers and their children'.

In page 9 at line 24 to insert 'any institution, agency, organisation or individual involved in the care of children and mothers who were separated from each other'.

Definition of 'care information'

(See Section 4.3.2 of our Briefing Note)

Amendment Group 1: Definition of 'care information'

In page 9 at line 25 to delete the definition of 'care information' in its entirety.

Amendment Group 2: Definition of 'care information'

In page 9 at line 25 to delete 'subject to subsection (2)'.

In page 9 at line 29 to insert 'the personal data of the relevant person'.

In page 9 at line 25 to insert 'the relevant person's place of birth'.

In page 9 at line 25 to insert 'the relevant person's medical records from birth until the time of placement, including x-rays, tests, vaccines'.

In page 9 at line 25 to insert 'records of any vaccine trials in which the relevant person was a research subject'.

In page 9 at line 30-31 to delete 'specified in the Schedule' and insert 'involved in the care of children and mothers who were separated from each other'.

In page 9 at line 35 to insert 'any person who cared for a relevant person while he or she was resident as a child in an institution involved in the care of children and mothers who were separated from each other'.

In page 9 at line 38 to insert 'the nature of care provided as part of a care arrangement'.

In page 9 at line 38 to insert 'the name of any person who cared for a relevant person while he or she was resident as a child in an institution involved in the care of children and mothers who were separated from each other'.

In page 9 at line 38 to insert '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'.

In page 9 at line 38 to insert 'the name of any person who made arrangements for a foster care arrangement or who placed the relevant person with prospective adopters'.

In page 9 at line 38 to insert 'the name of any person who made arrangements for the relevant person to be nursed out or boarded out'.

In page 9 at line 38 to insert 'the name of a parent, genetic relative or guardian who provided care to a relevant person'.

In page 9 at line 38 to insert ‘records about the person, including correspondence and other records associated with the administrative process surrounding the relevant person’s care’.

Definition of ‘early life information’

(See Sections 4.3.2 and 4.3.3 of our Briefing Note)

Amendment Group 1: Definition of ‘early life information’

In page 10 at line 3 to delete the definition of ‘early life information’ in its entirety..

Amendment Group 2: Definition of ‘early life information’

In page 10 at line 3 to delete ‘subject to subsection (2)’.

In page 10 at line 6 to insert ‘the personal data of the relevant person’.

In page 10 at line 6 to insert ‘the relevant person’s name at birth’.

In page 10 at line 6 to insert ‘the relevant person’s mother’s forename and surname, as held in the public Register of Births or equivalent if the relevant person’s mother was born outside of Ireland’.

In page 10 at line 6 to insert ‘the relevant person’s father’s forename and surname, as held in the public Register of Births or equivalent if the relevant person’s father was born outside of Ireland’.

In page 10 at line 6 to insert ‘the relevant person’s genetic relatives’ names, as held in the public Register of Births or equivalent if the relevant person’s relative was born outside of Ireland’.

In page 10 at line 6 to insert ‘the relevant person’s county/country of origin at the time of their birth’.

In page 10 at line 6 to insert ‘the occupation of the relevant person’s parents and family members at the time of the relevant person’s birth’.

In page 10 at line 6 to insert ‘the relevant person’s parents’ ages at the time of the relevant person’s birth’.

In page 10 at line 6 to insert ‘the relevant person’s grandparents’ occupations at the time of the relevant person’s birth’.

In page 10 at line 6 to insert ‘the number of siblings in the immediate family of the relevant person’s mother’.

In page 10 at line 6 to insert ‘the relevant person’s place of birth’.

In page 10 at line 6 to insert ‘whether the relevant person was carried to full term, and if not, what precipitated early delivery and at what stage in the pregnancy’.

In page 10 at line 6 to insert ‘the relevant person’s health status at birth.

In page 10 at line 6 to insert ‘the circumstances of the relevant person’s birth’.

In page 10 at line 6 to insert ‘the relevant person’s physical condition and circumstances during their early months and years’.

In page 10 at line 6 to insert ‘any records concerning the relevant person’s early-life care’

In page 10 at line 6 to insert ‘records concerning the relevant person’s health’.

In page 10 at line 6 to insert ‘the relevant person’s medical records from birth until the time of placement, including x-rays, tests, vaccines’.

In page 10 at line 6 to insert ‘the relevant person’s family medical history’.

In page 10 at line 6 to insert ‘records of any vaccine trials in which the relevant person was a research subject’.

In page 10 at line 6 to insert ‘the circumstances surrounding the relevant person’s adoption or informal care arrangement’.

In page 10 at line 6 to insert ‘records about the person, including correspondence and other records associated with the administrative process surrounding the relevant person’s adoption or informal care arrangement, and correspondence from the relevant person’s mother enquiring about the relevant person’.

In page 10 at line 6 to insert ‘records concerning the assessment process associated with the relevant person’s adoption or informal care arrangement’.

In page 10 at line 6 to insert ‘records concerning ‘the administrative process surrounding the relevant person’s adoption or informal placement, including records about the decision-making process around the placement, correspondence with the adoptive parents and others, and how the relevant person acquired their adoptive/new identity’.

In page 10 at line 6 to insert ‘the date on which the relevant person was made the subject of a foster care arrangement or placed with prospective adopters’.

In page 10 at line 6 to insert ‘information regarding whether the relevant person’s mother was resident in any other institution offering social care/support either prior to or subsequent to the adopted person’s birth’.

In page 10 at line 6 to insert ‘information regarding whether the mother stayed at the institution with the adopted person prior to their placement with the adoptive parents’.

In page 10 at line 6 to insert ‘any anecdotal information regarding the adopted person’s stay in the institution’.

In page 10 at line 6 to insert ‘whether the relevant person’s mother was transferred from the Mother and Baby Home to a Magdalene Laundry or other institution, and if so, details of the circumstances’.

In page 10 at line 6 to insert ‘whether the relevant person’s mother was transferred from a Magdalene Laundry or another institution, to the Mother and Baby Home prior to giving birth and if so, details of the circumstances’.

In page 10 at line 6 to insert ‘whether the relevant person’s mother gave informed consent to the adoption’.

In page 10 at line 6 to insert ‘whether the relevant person’s mother was made aware of or offered any other choices apart from adoption’.

In page 10 at line 6 to insert ‘whether the relevant person’s mother received support after the relevant person’s adoption’.

In page 10 at line 6 to insert ‘any letters, cards or other materials placed on the adoption file(s) by the relevant person’s mother’.

In page 10 at line 6 to insert ‘any letters, cards or other materials placed on the adoption file(s) by the relevant person’s father or other relatives’.

In page 10 at line 6 to insert ‘any letters, cards or other materials placed on the adoption file(s) by the relevant person’s adoptive parents’.

In page 10 at line 31-32 to delete ‘but does not include the name of the other person’.

Definition of ‘genetic relative’

(See Section 4.3.4 of our Briefing Note)

In page 11 at line 10 to delete ‘or’ before ‘first cousin’ and insert ‘or grandchild’.

In page 11 at line 12 to insert ‘d) a blood relative of a person whether the relationship is of the whole blood or half blood’.

In page 11 at line 16 to insert:

> ‘(i) the sex of the genetic relative,
> (ii) the name of the genetic relative,
> (iii) the nature of the relationship of the genetic relative to the person,
> (iv) whether the genetic relative was adopted’

In page 11 at line 18 to insert:

‘(i) the number of genetic siblings,’

In page 11 at line 19 to insert:

‘(iii) the name(s) of the genetic sibling(s),
(iv) whether the genetic sibling(s) is/are older or younger than the person,
(v) whether the genetic sibling(s) was/were adopted;’

Clann Project insertion: Definition of illegal adoption

(See Section 3.4 of our Briefing Note)

In page 11 at line 22 to insert:

‘illegal adoption’ means an illegal adoption, where any of the following situations occurred:

(a) where a non-marital child was registered as the natural child of the adoptive parents without the mother’s knowledge or consent and no adoption order was made;
(b) where a non-marital child was registered as the natural child of the adoptive parents and an adoption order was made;
(c) where a marital child was registered as the natural child of the adoptive parents and no adoption order was made;
(d) where a marital child was registered as the natural child of the adoptive parents and an adoption order was made;
(e) where the adoptive parents were not resident in the state at the time of the adoption;
(f) where a relinquished child over a year old was sent overseas for adoption without the consent and knowledge of the mother;
(g) where informed consent was not given, as in the case of birthmothers who were minors who signed consents without a guardian or legal advisor present, without understanding the import of severing parental rights;
(h) any adoption arranged by a private person or private body, not regarded as a ‘registered Adoption Agency’;
(i) any adoption arranged by a registered adoption agency or other body for the purpose of financial gain.

Definition of ‘incorrect birth registration’

(See Section 3.4 of our Briefing Note)

In page 11 at line 22 to delete ‘incorrect’ and insert ‘illegal’.

In page 11 at line 23 to delete ‘incorrect’ and insert ‘illegal’.

In page 11 at line 28 to insert ‘the personal data of the relevant person whose birth was illegally registered’.

Definition of 'medical information'

(See Section 4.5 of our Briefing Note)

In page 11 at line 32 to delete 'information' and insert 'records'.

Definition of 'personal data'

(See Section 4.3 of our Briefing Note)

In page 12 at line 12 to insert after 'Regulation':

> 'Under this Act, all records relating to the adoption or informal care arrangement of a relevant person are considered to be that person's personal data, regardless of whether that data is shared with another person. Personal data in relation to a relevant person, includes but is not limited to:
>
> Personal data in terms of the relevant person's physical, mental, and physiological identity, including but not limited to:
>
> - The relevant person's place of birth;
> - Details, if applicable, of whether the relevant person was carried to full term, and if not, what precipitated early delivery and at what stage in the pregnancy;
> - The relevant person's health status at birth;
> - Details regarding the circumstances of the relevant person's birth, e.g. was it a normal birth or if there were complications;
> - The relevant person's birth weight;
> - The relevant person's physical condition and circumstances during their early months and years;
> - Records concerning the relevant person's early-life care;
> - Records concerning the relevant person's health from birth until the time of placement;
> - The relevant person's medical records from birth until the time of placement, including x-rays, tests, vaccines;
> - The relevant person's family medical history;
> - Records of any vaccine trials in which the relevant person was a research subject.
>
> Personal data in terms of the relevant person's genetic identity, including but not limited to:
>
> - The relevant person's name at birth;
> - The relevant person's mother's forename and surname, as held in the public Register of Births or equivalent if the relevant person's mother was born outside of Ireland;
> - The relevant person's father's forename and surname, as held in the public Register of Births or equivalent if the relevant person's father was born outside of Ireland;
> - The relevant person's genetic relatives' names, as held in the public Register of Births or equivalent if the relevant person's relative was born outside of Ireland.

Personal data in terms of the relevant person's economic, cultural and social identity, both before and after their adoption or placement in informal care, relating to their economic, cultural and social identity both around the time of their birth and after their adoption or placement in informal care, and which relate to how the relevant person acquired their adoptive identity, including but not limited to:

- The relevant person's name at birth, as held in the public Register of Births;
- The relevant person's date of birth;
- The relevant person's place of birth;
- The relevant person's mother's forename and surname, as held in the public Register of Births or equivalent if the relevant person's mother was born outside of Ireland;
- The relevant person's father's forename and surname, as held in the public Register of Births or equivalent if the relevant person's father was born outside of Ireland;
- The relevant person's relatives' names, as held in the public Register of Births or equivalent if the relevant person's relative was born outside of Ireland;
- The relevant person's county/country of origin at the time of their birth;
- The occupation of the relevant person's parents and family members at the time of the relevant person's birth;
- The relevant person's parents' ages at the time of the relevant person's birth;
- The relevant person's grandparents' occupations at the time of the relevant person's birth;
- The number of siblings in the immediate family of the relevant person's mother;
- The circumstances surrounding the relevant person's adoption or informal care arrangement;
- Correspondence about the relevant person, including correspondence associated with the administrative process surrounding the relevant person's adoption or informal care arrangement, and correspondence from the relevant person's mother enquiring about the relevant person;
- The assessment process associated with the relevant person's adoption or informal care arrangement;
- The administrative process surrounding the relevant person's adoption or informal placement, including records about the decision-making process around the placement, correspondence with the adoptive parents and others, and how the relevant person acquired their adoptive/new identity;
- The names of the people responsible for the relevant person's care during the relevant person's early weeks, months and years';
- The place at which the relevant person resided and the individual who was in charge of that place;
- Where applicable, the date and place of the relevant person's baptism or any other ceremony of a religious or spiritual nature performed in the period in respect of the relevant person;
- Where applicable, any person, agency or organisation who made arrangements for the relevant person's adoption, whether or not an adoption was effected in respect of the relevant person;
- Where applicable, the date on which the relevant person was made the subject of a foster care arrangement or placed with prospective adopters;

- Information regarding whether the relevant person's mother was resident in any other institution offering social care/support either prior to or subsequent to the adopted person's birth,
- Information regarding whether the mother stayed at the institution with the adopted person prior to their placement with the adoptive parents;
- Any anecdotal information regarding the adopted person's stay in the institution
- If applicable, whether the relevant person's mother was transferred from the Mother and Baby Home to a Magdalene Laundry or other institution, and if so, details of the circumstances;
- If applicable, whether the relevant person's mother was transferred from a Magdalene Laundry or another institution, to the Mother and Baby Home prior to giving birth and if so, details of the circumstances;
- Whether the relevant person's mother gave informed consent to the adoption;
- Whether the relevant person's mother was made aware of or offered any other choices apart from adoption;
- Whether the relevant person's mother received support after their adoption;
- Any letters, cards or other materials placed on the adoption file(s) by the relevant person's mother;
- Any letters, cards or other materials placed on the adoption file(s) by the relevant person's father or other relatives;
- Any letters, cards or other materials placed on the adoption file(s) by the relevant person's adoptive parents.

Definition of 'provided item'

(See Section 4.3.6 of our Briefing Note)

Amendment Group 1: Definition of 'provided item'
In page 12 at line 16 to delete the definition of 'provided item' in its entirety.

Amendment Group 2: Definition of 'provided item'

In page 12 at line 19 to delete 'involved in the provision of care of' and insert 'connected to'.

Definition of 'relevant person'

(See Section 3 of our Briefing Note)

In page 13 at line 6 to delete 'incorrect' and to insert 'illegal'.

In page 13 at line 11 to insert 'a person who was separated from their genetic relatives through forced family separation, regardless of the circumstances'.

Definition of 'relevant record'

(See Section 4 of our Briefing Note)

In page 13 at line 13 to insert 'the personal data of the relevant person'.

In page 13 at line 22-23 to delete ‘in the period commencing on 1 January 1940 and ending on 31 December 1979’.

In page 13 at line 24 to insert ‘regardless of whether or not an adoption took place’ after ‘State’.

In page 13 at line 26 to insert ‘regardless of whether or not an adoption took place’ after ‘with the person’.

In page 13 at line 28 to insert ‘Any information recorded on the Contact Preference Register.

In page 13 at line 28 to insert ‘Administrative records of the Authority, the Agency or a Primary or Secondary Information Source’.

In page 13 at line 28 to insert ‘A full schedule of all records held on the file relating to the relevant person’.

In page 13 at line 28 to insert ‘Records provided to or created by the Authority or the Agency in the course of providing a tracing service.’

Definition of ‘secondary information source’

(See Section 4 of our Briefing Note)

In page 14 at line 1 to insert ‘any person or organisation involved in facilitating adoptions’.

In page 14 at line 1 to insert ‘any person or organisation involved in the ‘care’ of a relevant person’.

In page 14 at line 1 to insert ‘any person or organisation involved in forced family separation’.

In page 14 at line 1 to insert ‘a religious order of the Roman Catholic Church’.

In page 14 at line 1 to insert ‘a religious order of the Church of Ireland’.

In page 14 at line 1 to insert ‘a diocese or parish of the Roman Catholic Church’.

In page 14 at line 1 to insert ‘a diocese or parish of the Church of Ireland’.

In page 14 at line 1 to insert ‘any religious order of the Roman Catholic Church involved in the incarceration of women and children and forced family separation’.

In page 14 at line 1 to insert ‘any religious order of the Church of Ireland involved in the incarceration of women and children and forced family separation’.

In page 14 at line 4 to delete subsection (2) in its entirety.

SECTION 5: ADDITIONAL INSTITUTION

(See Section 4.4.1 of our Briefing Note)

In page 14 at line 35 to insert 'any person or organisation involved in facilitating adoptions, any person or organisation involved in the 'care' of a relevant person, any person or organisation involved in forced family separation' after 'resident'.

In page 14 at line 35 to delete 'in respect of which' and replace with 'regardless of whether'.

PART 2

(See Sections 1 and 2 of our Briefing Note)

SECTION 6: RELEVANT PERSON MAY APPLY FOR COPY OF BIRTH CERTIFICATE

Section 6 (1)
In page 15 at line 8 to delete 'and sections 7 and 8'.

In page 15 at line 15 to delete 'or, where section 8 applies, the Authority'.

Section 6 (2)
In page 15 at line 20 to delete 'and sections 7 and 8'.

In page 15 at line 22-23 to delete 'or, where section 8 applies, the Authority'.

Section 6 (3)
In page 15 at line 24 to delete Section 3 in its entirety.

Clann Project insertion: Section 6 (4)(c)
In page 15 at line 37 to insert:

> 'Where no entry is present in the register of births, the Authority shall seize all records relating to the relevant person's adoption and open an investigation into what transpired. The relevant person will be kept informed and will be consulted throughout the course of the investigation.'

Section 6 (5)
In page 16 at line 1 to delete 'and sections 7 and 8'.

SECTION 7: PROVISION OF BIRTH CERTIFICATE TO APPLICANT UNDER SECTION 6 AGED 18 YEARS OR OVER

In page 16-17 at line 7 to delete Section 7 in its entirety.

SECTION 8: PROVISION OF BIRTH CERTIFICATE TO APPLICANT UNDER SECTION 6 AGED BETWEEN 16 AND 18 YEARS

In page 17-18 at line 6 to delete Section 8 in its entirety.

SECTION 9: RELEVANT BODY TO PROVIDE BIRTH INFORMATION ON APPLICATION BY RELEVANT PERSON AGED 18 YEARS OR OVER

Section 9 (2)
In page 18 at line 13 to delete 'be in such form as the recipient body concerned may specify'.

Section 9 (4)
In page 18-19 at line 27 to delete subsection 4 in its entirety.

Section 9 (5)
In page 19 at line 3 to delete subsection 5 in its entirety.

Section 9 (6)
In page 19 at line 9 to delete subsection 6 in its entirety.

Section 9 (7)
In page 19 at line 14 to delete subsection 7 in its entirety.

Clann Project insertion: Section 9 (8)(d)
In page 19 at line 25 to insert 'a record created or held by any institution, agency or individual involved in illegal birth registrations'.

Clann Project insertion: Section 9(9)(a)

In page 19 at line 28 to insert:

> 'Where no birth information is available, the Authority shall seize all records relating to the relevant person's adoption and/or illegal birth registration and open an investigation into what transpired. The applicant will be kept informed and will be consulted throughout the course of the investigation.'

SECTION 10: AUTHORITY TO PROVIDE BIRTH INFORMATION ON APPLICATION BY RELEVANT PERSON AGED BETWEEN 16 AND 18 YEARS

Section 10 (4)
In page 20 at line 11 to delete subsection 4 in its entirety.

Section 10(5)
In page 20 at line 25 to delete subsection 5 in its entirety.

Section 10(6)
In page 20 at line 29 to delete subsection 6 in its entirety.

Clann Project insertion: Section 10(7)(a)

In page 20 at line 37 to insert:

> 'Where no birth information is available, the Authority shall seize all records relating to the relevant person's adoption and/or illegal birth registration and open an investigation into what transpired. The applicant will be kept informed and will be consulted throughout the course of the investigation.'

SECTION 11: RELEVANT BODY TO PROVIDE EARLY LIFE, CARE INFORMATION OR INCORRECT BIRTH REGISTRATION INFORMATION ON APPLICATION BY RELEVANT PERSON AGED 18 YEARS OR OVER

(See Sections 4.3 4.3.2 and 4.3.3 of our Briefing Note)

Amendment Group 1: Section 11
In page 21 at line 1 to delete Section 11 in its entirety.

Clann Project insertion: New Section 11

In page 21 at line 1 to insert:

> **Data controllers to provide personal data on application by relevant person aged 16 years or over**
>
> (a) A relevant person who has attained the age of 16 years may apply to a data controller for the provision by the data controller him or her of all of the relevant person's personal data that is held by the controller.
> (b) All personal data will be processed in accordance with the General Data Protection Regulation and the Data Protection Act 2018.

Amendment Group 2: Section 11

Section 11(1)(a)
In page 21 at line 7 to insert 'records containing' before 'early life information'.

Section 11(1)(b)
In page 21 at line 8 to insert 'records containing' before 'care information'.

Section 11(1)(c)
In page 21 at line 7 to insert 'records containing' before 'incorrect birth registration information'.

Clann Project insertion: Section 11(1)(d)
In page 21 at line 8 to insert 'any other records on the relevant person's file'.

Clann Project insertion: Section 11(1)(e)
In page 21 at line 8 to insert 'the personal data of the relevant person'.

Section 11(2)(a)
In page 21 at line 11 to delete 'to the extent that it is practicable to do so'.

In page 21 at line 12 to insert 'the personal data of the relevant person' after 'contain'.

Section 11(2)(b)
In page 21 at line 15 to delete subsection (2)(b) in its entirety.

Clann Project insertion: New Section 11(2)(b)
In page 21 at line 15 to insert:

> 'shall provide the relevant person with a full schedule of the records that it holds in relation to the relevant person's adoption or illegal birth registration'.

Clann Project insertion: New Section 11(3)(a)
In page 21 at line 20 to insert:

> Where the information is unavailable, the relevant body shall make every effort to locate the data controller holding the relevant person's records.

SECTION 12: AUTHORITY TO PROVIDE EARLY LIFE OR CARE INFORMATION ON APPLICATION BY RELEVANT PERSON AGED BETWEEN 16 AND 18 YEARS

(See Sections 4.3 4.3.2 and 4.3.3 of our Briefing Note)

Amendment Group 1: Section 12
In page 21 at line 21 to delete Section 12 in its entirety.

Amendment Group 2: Section 12

Section 12(1)(a)
In page 21 at line 27 to insert 'records containing' before 'early life information'.

Section 12(1)(b)
In page 21 at line 28 to insert 'records containing' before 'care information'.

Clann Project insertion: New Section 12(1)(c)
In page 21 at line 28 to insert 'records containing incorrect birth registration information'.

Clann Project insertion: New Section 12(1)(d)
In page 21 at line 28 to insert 'any other records on the relevant person's file'.

Clann Project insertion: New Section 12(1)(e)
In page 21 at line 28 to insert 'the personal data of the relevant person'.

Section 12(2)(a)
In page 21 at line 31 to delete 'to the extent that it is practicable to do so'.

In page 21 at line 12 to insert ‘the personal data of the relevant person’ after ‘contain’.

Section 12(2)(b)
In page 21 at line 34 to delete subsection (2)(b) in its entirety.

Clann Project insertion: New Section 12(2)(b)
In page 21 at line 34 to insert:

> ‘shall provide the relevant person with a full schedule of the records that it holds in relation to the relevant person’s adoption or illegal birth registration’.

Clann Project insertion: New Section 12(3)(a)
In page 21 at line 39 to insert:

> ‘Where the information is unavailable, the relevant body shall make every effort to locate the data controller holding the relevant person’s records.’

SECTION 13: APPLICATION FOR PROVIDED ITEMS

(See Section 4.3.6 of our Briefing Note)

Section 13(1)

In page 22 at line 4 to delete ‘a specified provided item, or’.

In page 22 at lines 4-5 to delete ‘and that was provided for the purpose of its being made available to him or her’.

Clann Project insertion: New Section 13(3)(c)

In page 22 at line 15 to insert:

> ‘where a specified provided item is requested or the applicant believes that provided items exist and the relevant body is not in possession of the provided items, the relevant body shall make every effort to locate the data controller holding the provided item.’

Clann Project insertion: New Section 13(4)
In page 22 at line 15 to insert:

> ‘When a relevant person applies under Sections 11 and 12 for information and/or when a relevant person applies for their personal data, the relevant body concerned will make available all provided items to the relevant person regardless of whether they have explicitly requested those items.’

SECTION 14: APPLICATION FOR PROVIDED ITEMS BY RELEVANT PERSON AGED BETWEEN 16 AND 18 YEARS

(See Section 4.3.6 of our Briefing Note)

Section 14(1)

In page 22 at line 19 to delete 'a specified provided item, or'.

In page 22 at lines 20-21 to delete 'that was provided for the purpose of its being made available to the relevant person and'.

Clann Project insertion: New Section 14(2)(c)

In page 22 at line 26 to insert:

> 'where a specified provided item is requested or the applicant believes that provided items exist and the relevant body is not in possession of the provided items, the relevant body shall make every effort to locate the data controller holding the provided item.'

Clann Project insertion: New Section 14(3)
In page 22 at line 26 to insert:

> 'When a relevant person applies under Sections 11 and 12 for information and/or when a relevant person applies for their personal data, the relevant body concerned will make available all provided items to the relevant person regardless of whether they have explicitly requested those items.'

SECTION 15: RELEVANT BODY OR AUTHORITY TO PROVIDE MEDICAL INFORMATION RELATING TO RELEVANT PERSON ON APPLICATION BY RELEVANT PERSON

(See Section 4.5 of our Briefing Note)

Section 15(1)

In page 22 at line 31 to delete 'information' and insert 'records'.

Section 15(1)(a)

In page 22 at line 32 to delete subsection (1)(a) in its entirety.

Section 15(2)

In page 22 at line 35 to delete 'information' and insert 'records'.

Section 15(3)

In page 22 at line 39 to delete ‘information’ and insert ‘records’.

In page 23 at line 1 to delete subsection (1)(a) in its entirety.

Section 15(4)

In page 23 at line 5 to delete ‘information’ and insert ‘records’.

Clann Project insertion: New Section 15(5)(a)

In page 23 at line 9 to insert:

> ‘Where the information is unavailable, the relevant body shall make every effort to locate the data controller holding the relevant person’s records.’

Section 15(6)

In page 23 at line 10 to delete subsection (6) in its entirety.

Clann Project insertion: New Section 15(6)

In page 23 at line 10 to insert:

> ‘When a relevant person applies under Sections 11 and 12 for information and/or when a relevant person applies for their personal data, the relevant body or the Authority will make available all medical records to the relevant person regardless of whether they have explicitly requested those items.’

SECTION 16: RELEVANT BODY OR AUTHORITY TO PROVIDE MEDICAL INFORMATION RELATING TO GENETIC RELATIVE OF RELEVANT PERSON ON APPLICATION BY RELEVANT PERSON

(See Section 4.5 of our Briefing Note)

Section 16(1)(c)

In page 23 at line 22 to delete subsection *(1)(c)* in its entirety.

Section 16(2)

In page 23 at line 25 to delete ‘to which the application relates only—'.

In page 23 at line 25 to insert ‘without delay'.

Section 16(2)(a)

In page 23 at line 26 to delete subsection (2)(a) in its entirety.

Section 16(2)(b)

In page 23 at line 29 to delete subsection (2)(b) in its entirety.

Section 16(3)(c)

In page 23 at line 38 to delete subsection (3)(c) in its entirety.

Clann Project insertion: New Section 16(3)(d)

In page 23 at line 38 to insert:

> ‘The adoptive parent of a child who has not attained the age of 16 years may apply in writing to the Authority for the provision by it to him or her of medical information that—
>
> (a) is contained in a record to which this section applies that is held by the Authority or by the Agency,
>
> (b) relates to his or her genetic relative’.

Section 16(4)

In page 24 at line 1 to delete ‘to which the application relates only—'.

In page 24 at line 1 to insert ‘without delay'.

Section 16(4)(a)

In page 24 at line 3 to delete subsection (4)(a) in its entirety.

Section 16(4)(b)

In page 24 at line 6 to delete subsection (4)(b) in its entirety.

Section 16(6)

In page 24 at line 16 to delete subsection (6) in its entirety.

Clann Project insertion: New Section 16(6)

In page 24 at line 16 to insert:

> ‘The Minister shall issue guidelines to ensure that all medical information relating to a genetic relative is identified in the records held by the relevant body.’

Section 16(7)

In page 24 at line 20 to insert ‘and persons with expertise in reading archival documents’ after ‘medical conditions’.

Clann Project insertion: New Section 16(8)(a)

In page 24 at line 24 to insert:

> ‘Where the medical information is unavailable, the relevant body shall make every effort to locate the data controller holding the relevant person’s records.’

Section 16(9)

In page 24 at line 25 to delete subsection (9) in its entirety.

Clann Project insertion: New Section 16(9)

In page 24 at line 25 to insert:

> ‘The Authority shall make available an emergency telephone number for relevant persons in life-threatening situations where medical information may be required immediately.’

SECTION 17: INFORMATION SESSION

(See Section 2 of our Briefing Note)

In page 24 at line 33 to delete Section 17 in its entirety.

SECTION 18: PROVISION OF INFORMATION TO RELEVANT PERSON WHO HAS NOT ATTAINED AGE OF 18 YEARS

(See Section 2.9 of our Briefing Note)

Section 18(1)

In page 25 at line 28 to insert ‘where requested by the relevant person’ before ‘it shall’.

Clann Project insertion: New Section 18(1)(c)

In page 25 at line 31 to insert:

> ‘Where the relevant person does not wish to have a meeting the records and provided items shall be provided to the relevant person via post or electronically.’

Clann Project insertion: New Section 18(1)(d)

In page 25 at line 31 to insert:

> 'During the meeting referred to in subsection (a), the designated person shall not try to influence the relevant person in any way in relation to the relevant person's views on their adoption. If a relevant person requests emotional or psychological support, the designated person shall provide the relevant person with the details'.

Clann Project insertion: New Section 18a

In page 25 at line 4 to insert:

SECTION 18a: CITIZENSHIP, REPATRIATION AND VISITS TO THE STATE FOR PERSONS PLACED FOR ADOPTION OUTSIDE THE STATE

(See Section 3.4 of our Briefing Note)

(1) A person placed for adoption outside the State may make an application to the Authority for
    a. Assistance with claiming their Irish citizenship,
    b. Repatriation to the State with full citizenship benefits including the right to housing and medical care,
    c. A visit to the State to facilitate the person's learning about their country of origin
    d. An application under subsection (b) is not limited to one visit.
(2) Where an application has been made to the Authority under subsection (1) the Authority shall liaise with the Department of Foreign Affairs and the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media to make the necessary arrangements,
(3) All costs incurred under this Section shall be covered by the State.'

SECTION 19: MISCELLANEOUS (PART 2)

(See Section 6 of our Briefing Note)

Section 19(1)
In page 26 at line 5 to insert 'In consultation with the Adoption Advisory Group,' before 'The Minister'.

Section 19(3)
In page 26 at line 14 to insert 'In consultation with the Adoption Advisory Group,' before 'Subject to'.

Section 19(4)
In page 26 at line 20 to delete 'section 17 or'.

PART 3: ACCESS BY QUALIFYING PERSON TO BIRTH CERTIFICATE, BIRTH AND OTHER INFORMATION AND PROVIDED ITEMS RELATING TO RELEVANT PARENT

(See Section 3.2 of our Briefing Note)

SECTION 20: DEFINITIONS (PART 3)

In page 26 at line 33 to insert 'or grandmother or grandfather, or great-grandmother or great-grandfather' after 'or father'.

In page 26 at line 33 to insert 'or adoptive grandmother or adoptive grandfather, or adoptive great-grandmother or adoptive great-grandfather' after 'or adoptive father'.

SECTION 21: RELEVANT BODY TO PROVIDE BIRTH INFORMATION RELATING TO RELEVANT PARENT ON APPLICATION BY QUALIFYING PERSON

Section 21(1)
In page 27 at lines 4-5 to delete 'birth information that is held' and insert 'records that are'.

In page 27 at line 5 to delete 'relates' and insert 'relate'.

Section 21(2)(a)
In page 27 at lines 10-11 to delete 'that it holds that contain the birth information to which the application relates'.

Section 21(2)(b)
In page 27 at line 12 to delete subsection (2)(b) in its entirety.

Clann Project insertion: New Section 21(2)(b)
In page 27 at line 12 to insert:

> 'shall provide the applicant with a full schedule of the records that it holds in relation to the relevant parent'.

Section 21(3)(b)
In page 27 at line 16 to delete subsection (3)(b) in its entirety.

Section 21(4)(d)
In page 27 at line 23 to insert 'in consultation with the Adoption Advisory Group' after 'prescribe'.

Clann Project insertion: New Section 21(4)(d)
In page 27 at line 23 to insert 'the personal data of the relevant parent'.

Section 21(5)
In page 27 at line 24 to insert:

> 'Where the records are unavailable, the relevant body shall make every effort to locate the data controller holding the relevant parent's records.'

SECTION 22: RELEVANT BODY TO PROVIDE EARLY LIFE, CARE INFORMATION OR INCORRECT BIRTH REGISTRATION INFORMATION RELATING TO RELEVANT PARENT ON APPLICATION BY QUALIFYING PERSON

Section 22(1)

In page 27 at line 35 to insert 'the personal data of the relevant parent'.

Section 22(2)

In page 28 at line 1 to delete 'to the extent that it is practicable to do so'.

In page 28 at line 2 to insert 'the personal data of the relevant parent' after 'contain'.

Section 22(2)(b)
In page 28 at line 4 to delete subsection (2)(b) in its entirety.

Clann Project insertion: New Section 22(2)(b)
In page 28 at line 4 to insert:

> 'shall provide the applicant with a full schedule of the records that it holds in relation to the relevant parent'.

Section 22(3)(b)
In page 28 at line 9 to delete subsection (3)(b) in its entirety.

SECTION 23: APPLICATION BY QUALIFYING PERSON FOR CERTAIN PROVIDED ITEMS

Section 23(1)(a)

In page 28 at line 14 to delete 'certain'.

In page 28 at line 16 to delete 'a specified provided item, or'.

Clann Project insertion: New Section 23(2)(c)
In page 28 at line 4 to insert:

> 'where a specified provided item is requested or the applicant believes that provided items exist and the relevant body is not in possession of the provided items, the relevant body shall make every effort to locate the data controller holding the provided item.'

Section 23(3)(c)
In page 28 at line 14 to delete subsection (3)(c) in its entirety.

SECTION 24: RELEVANT BODY OR AUTHORITY TO PROVIDE MEDICAL INFORMATION RELATING TO GENETIC RELATIVE OF RELEVANT PERSON ON APPLICATION BY QUALIFYING PERSON

Section 24(1)(c)

In page 28 at line 36 to delete subsection *(1)(c)* in its entirety.

Section 24(2)

In page 29 at line 3 to delete ‘to which the application relates only—'.

In page 29 at line 3 to insert ‘without delay'.

Section 24(2)(a)

In page 29 at line 4 to delete subsection (2)(a) in its entirety.

Section 24(2)(b)

In page 29 at line 7 to delete subsection (2)(b) in its entirety.

Section 24(4)

In page 29 at line 17 to delete subsection (4) in its entirety.

Clann Project insertion: New Section 24(4)

In page 29 at line 17 to insert:

> ‘The Minister shall issue guidelines to ensure that all medical information relating to a genetic relative is identified in the records held by the relevant body.’

Section 24(5)

In page 29 at line 20 to insert ‘and persons with expertise in reading archival documents’ after ‘medical conditions’.

Section 24(7)

In page 29 at line 26 to delete subsection (7) in its entirety.

Section 24(8)

In page 29 at line 35 to insert ‘relating to a relevant person’.

Section 24(8)(a-c)

In page 29 at line 35 to delete subsections (a-c) in their entirety.

Clann Project insertion: New Section 25
In page 29 at line 35 to insert:

> 'The Authority shall make available an emergency telephone number for relevant persons in life-threatening situations where medical information may be required immediately.'

SECTION 25: MISCELLANEOUS (PART 3)

Section 25(1)
In page 30 at line 1 to insert 'In consultation with the Adoption Advisory Group' before 'The Minister'.

PART 4: ACCESS BY QUALIFYING PERSON TO BIRTH AND OTHER INFORMATION AND PROVIDED ITEMS RELATING TO RELEVANT RELATIVE

(See Sections 3.1 and 3.2 of our Briefing Note)

SECTION 26: DEFINITIONS (PART 4)

Clann Project insertion: New Section 26(1)(b)(iii)

In page 30 at line 16 to insert 'died while he or she was resident in an institution or other arrangement prior to being adopted, boarded out or nursed out'.

Clann Project insertion: New Section 26(2)(b)

In page 30 at line 22 to insert 'his or her grandmother or grandfather'.

SECTION 27: RELEVANT BODY TO PROVIDE BIRTH INFORMATION RELATING TO RELEVANT RELATIVE ON APPLICATION BY QUALIFYING RELATIVE

Section 27(1)

In page 30 at line 33 to delete 'that is' after 'birth information' and to insert 'and all other records that are held'.

Section 27(2)

In page 30 at line 35 to insert 'and other records' after 'birth information'.

Section 27(2)(a)

In page 31 at line 1 to delete 'to the extent that it is practicable to do so'.

Section 27(2)(b)
In page 31 at line 4 to delete subsection (2)(b) in its entirety.

Clann Project insertion: New Section 27(2)(b)
In page 31 at line 4 to insert:

> 'shall provide the applicant with a full schedule of the records that it holds in relation to the relevant person's adoption or illegal birth registration'.

Clann Project insertion: New Section 27(4)(d)
In page 31 at line 16 to insert 'a record created or held by a data controller involved with the relevant relative's adoption, boarding out, nursing out and/or incarceration'.

Clann Project insertion: New Section 27(4)(e)
In page 31 at line 16 to insert 'the personal data of the relevant relative'.

Clann Project insertion: New Section 27(5)(a)
In page 31 at line 19 to insert:

> Where the information is unavailable, the relevant body shall make every effort to locate the data controller holding the relevant relative's records.

SECTION 28: RELEVANT BODY TO PROVIDE EARLY LIFE, CARE INFORMATION OR INCORRECT BIRTH REGISTRATION INFORMATION RELATING TO RELEVANT RELATIVE ON APPLICATION BY QUALIFYING RELATIVE

Clann Project insertion: New Section 28(1)(d)

In page 31 at line 28 to insert 'the personal data of the relevant relative'.

Section 28(2)(a)

In page 31 at line 31 to delete 'to the extent that it is practicable to do so'.

Section 28(2)(b)
In page 31 at line 34 to delete subsection (2)(b) in its entirety.

Clann Project insertion: New Section 28(2)(b)
In page 31 at line 34 to insert:

> 'shall provide the applicant with a full schedule of the records that it holds in relation to the relevant person's adoption or illegal birth registration'.

Clann Project insertion: New Section 28(4)(a)
In page 32 at line 6 to insert:

> Where the information is unavailable, the relevant body shall make every effort to locate the data controller holding the relevant relative's records.

SECTION 29: APPLICATION BY QUALIFYING RELATIVE FOR CERTAIN PROVIDED ITEMS (PART 4)

Section 29(1)

In page 32 at line 7 to delete 'certain'.

In page 32 at lines 9-10 to delete 'a specified provided item, or'.

Clann Project insertion: New Section 29(2)(c)
In page 28 at line 4 to insert:

> 'where a specified provided item is requested or the applicant believes that provided items exist and the relevant body is not in possession of the provided items, the relevant body shall make every effort to locate the data controller holding the provided item.'

In page 32 at lines 10-11 to delete 'that was provided for the purpose of its being made available to his or her relevant relative'.

SECTION 30: RELEVANT BODY TO PROVIDE MEDICAL INFORMATION RELATING TO RELEVANT RELATIVE ON APPLICATION BY QUALIFYING RELATIVE
Section 30(4)

In page 32 at line 35 to insert 'relating to a relevant person'.

Section 30(4)(a-c)

In page 32 at line 35 to delete subsections (a-c) in their entirety.

Clann Project insertion: New Section 30a

In page 32 at line 37 to insert:

'SECTION 30a: RELEVANT BODY TO PROVIDE INFORMATION TO PARENTS

(4) A parent may apply to a relevant body for the provision to her or him of information held by the relevant body for maternity information (if applicable) and other personal data.
(5) The relevant body, on application made to it under this section shall
    a. provide the applicant with a copy of the records that it holds that relate to them, and
    b. shall provide the applicant with a full schedule of the records that it holds in relation to them'.
(6) Where a parent applies to the relevant body for information as set out under subsection (1), that information shall be provided in its original form without redaction.'
(7) All personal data will be processed in accordance with the General Data Protection Regulation and the Data Protection Act 2018.

SECTION 31: MISCELLANEOUS (PART 4)

Section 31(1)
In page 33 at line 4 to insert 'In consultation with the Adoption Advisory Group,' before 'The Minister'.

PART 5: TRACING SERVICE

(See Section 7 of our Briefing Note)

SECTION 32: AGENCY AND AUTHORITY MAY PROVIDE A TRACING SERVICE ON APPLICATION

Clann Project insertion: New Section 32(1)(a)

In page 33 at line 13 to insert:

> 'The Agency and the Authority shall employ trained genealogists to carry out the task of locating specified persons.'

Section 32(2)

In page 33 at line 14 to insert 'or the Authority' after 'the Agency'.

Section 32(4)

In page 34 at line 1 to delete subsection 4 in its entirety.

Section 33

In page 34 at line 1 to delete Section 33 in its entirety.

Further clarity required from the Minister for this section.

Section 34(1)

In page 34 at lines 8-9 to delete 'or where the Minister authorises it to do so under section 33'.

Clann Project insertion: New Section 34(3)(a)

In page 34 at line 37 to insert:

> 'A request under subsection (2) may be made only where the Agency or the Authority reasonably has exhausted all other non-intrusive avenues, including a search of the Register of Electors and the civil registration system.'

Clann Project insertion: New Section 34(4)(a)

In page 35 at line 2 to insert:

> 'A person who receives a request made under subsection (2) shall sign a non-disclosure agreement.'

Section 34(6)(g)

In page 35 at line 5 to delete subsection (g) in its entirety.

Section 34(6)(h)

In page 35 at line 5 to delete subsection (h) in its entirety.

Section 34(8)

In page 35 at lines 24-25 to delete 'or, in the case of an authorisation under section 33'.

Section 34(8)

In page 35 at line 25 to insert 'and, it shall provide the person with a DNA testing kit free of charge' after 'of that fact'.

Section 34(9)

In page 35 at line 26 to insert 'In consultation with the Adoption Advisory Group,' before 'The Minister'.

SECTION 35: AGENCY OR THE AUTHORITY TO FACILITATE CONTACT BETWEEN PARTIES OR TO SHARE INFORMATION BETWEEN PARTIES

Section 35(1)

In page 35 at line 33 to delete 'take all reasonable steps' and to insert 'make every effort' before 'to ascertain'.

Clann Project insertion: New Section 35(1)(d)

In page 35 at line 39 to insert:

> 'he or she wishes to obtain a copy of his or her personal data held by the Agency and/or the Authority'.

Section 35(3)

In page 36 at lines 6-7 to delete 'take such action as it considers appropriate to facilitate such contact'.

In page 36 at line 6 to insert after ‘shall’:

‘inform both persons of their right to choose whether they:

a) wish to proceed with contact without the assistance of the Agency or the Authority, or
b) wish to proceed with contact with the assistance of the Agency or the Authority.’

Clann Project insertion: New Section 35(3)(a)

In page 36 at line 6 to insert:

> ‘where both the requester and the specified person wish to proceed with contact without the assistance of the Agency or the Authority, the Agency or the Authority shall, without delay, provide each person with contact details for the other, or’

Clann Project insertion: New Section 35(3)(b)

In page 36 at line 6 to insert:

> ‘where either or both persons wish to proceed with contact with the assistance of the Agency or the Authority, contact shall be facilitated in line with statutory guidelines set out by the Minister in consultation with the Adoption Advisory Group.’

Clann Project insertion: New Section 35(3)(c)

In page 36 at line 6 to insert:

> ‘where either or both persons wish have proceeded with contact with the assistance of the Agency or the Authority, but both persons subsequently decide they wish to be in direct contact with each other, the Agency or the Authority shall, without delay, provide each person with contact details for the other.’

Section 35(4)

In page 36 at line 10 to insert ‘in accordance with statutory guidelines set out by the Minister in consultation with the Adoption Advisory Group’ after ‘shall’.

SECTION 36: APPLICATION BY CERTAIN ADOPTED PERSON FOR TRACING SERVICE IN ANOTHER JURISDICTION

Clann Project insertion: New Section 36(2)(c)

In page 36 at line 27 to insert:

> ‘a request by the Authority that the relevant authority provide all records relating to the person’s adoption so that they can be made available to the person’.

Clann Project insertion: New Section 36(4)

In page 36 at line 29 to insert:

> 'The Authority, on receipt of an application under subsection (1), shall immediately provide the adopted person with all records relating to their adoption.'

SECTION 37: GUIDELINES (PART 5)

(See Section 6 of our Briefing Note)

Section 37(1)

In page 36 at line 31 to insert 'In consultation with the Adoption Advisory Group,' before 'The Minister'.

In page 36 at line 31 to insert 'and the bodies to which Section 34 apply' after 'the Authority'.

PART 6: CONTACT PREFERENCE REGISTER

(See Section 5 of our Briefing Note)

SECTION 38: CONTACT PREFERENCE REGISTER

Section 38(1)

In page 37 at line 7 to insert 'provide a service to people affected by adoption and informal care arrangements' after 'shall be to'.

Clann Project insertion: New Section 38(1)(f)

In page 37 at line 7 to insert:

> 'safeguard and maintain existing registrations on the National Adoption Contact Preference Register'.

Section 38(2)(c)

Further clarity required from the Minister for this subsection and subsection 13.

Section 38(3)(d)

In page 37 at line 25 to insert 'except in instances where there are or have been child protection issues' after 'deceased'.

Section 38(3)(e)

In page 37 at line 26 to insert ‘except where the adopted person has lodged an objection to such an entry prior to their death’ after ‘deceased’.

Clann Project insertion: New Section 38(3)(h)

In page 37 at line 29 to insert:

> ‘a person who is or was a friend of a parent of a relevant person’.

Clann Project insertion: New Section 38(3)(i)

In page 37 at line 29 to insert:

> ‘a person who is or was a friend of a deceased relevant person’.

Section 38(4)

In page 37 at line 32 to insert ‘and in line with guidelines compiled by the Adoption Advisory Group’ after ‘subsection (2)’.

Clann Project insertion: New Section 38(4)(a)

In page 37 at line 32 to insert:

> ‘The Authority shall make an entry in the register unless it is satisfied that the registrant is the person they claim to be.’

Clann Project insertion: New Section 38(5)(a)(iv)

In page 38 at line 7 to insert:

> ‘his or her right to submit a subject access request for all personal data held by the Authority’.

Section 38(6)

In page 38 at line 12 to insert ‘In consultation with the Adoption Advisory Group,’ before ‘The Minister’.

Section 38(7)(i)

In page 38 at line 35 to delete subsection (i) in its entirety.

Clann Project insertion: New Section 38(11)(f)

In page 39 at line 23 to insert:

> 'he or she is not willing to be contacted by the specific person at the moment, but would like to be notified if the specific person registers.'

Clann Project insertion: New Section 38(11)(g)

In page 39 at line 23 to insert:

> 'a person to whom subsection 38(3)(h) or 38(3)(i)[81] applies shall not be permitted to register a preference of no contact'.

Section 38(14)

In this section and section 39, 'consent' shall be construed in accordance with the General Data Protection Regulation.

Clann Project insertion: New Section 38(15)(f)

In page 40 at line 2 to insert 'a genetic relative of a person or a parent'.

SECTION 41: APPLICANTS FOR ENTRY ON REGISTER TO BE INFORMED OF PROVISIONS OF PART 5

In page 42 at line 14 to insert 'Part 2, Part 3, Part 4 and' before 'Part 5'.

In page 42 at line 14 to insert 'as applicable' after 'Part 5'.

SECTION 42: TRANSFER OF INFORMATION AND PREFERENCES FROM NATIONAL ADOPTION CONTACT PREFERENCE REGISTER

Clann Project insertion: New Section 42(1)(c)

In page 42 at line 23 to insert:

> 'contact the existing registrants on the National Adoption Contact Preference Register to inform them that their entry will be transferred to the new Contact Preference Register and to ascertain whether they wish to change their original preferences'.

Section 42(2)

In page 42 at line 24 to insert 'where the registrant has not changed or clarified his or her preference in accordance with subsection (1)(c)[82]' after 'subsection (1)'.

Section 42(3)

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[81] Both of these sections are new sections recommended by the Clann Project

[82] This is a new section recommended by the Clann Project

In page 42 at line 29 to delete subsection (3) in its entirety.

Clann Project insertion: New Section 42(3)

In page 42 at line 29 to insert:

'The Authority shall, no later than 6 months after the date on which this section comes into operation, arrange for secure, encrypted storage of the National Adoption Contact Preference Register.'

PART 7: SAFEGUARDING RELEVANT RECORDS

(See Section 4.7 of our Briefing Note)

SECTION 43: MINISTER MAY PRESCRIBE RELEVANT RECORD, SECONDARY INFORMATION SOURCE

Section 43(1)
In page 42 at line 34 to insert 'In consultation with the Adoption Advisory Group,' before 'The Minister'.

Clann Project insertion: New Section 43(1)(d)
In page 43 at line 5 to insert:

> 'it relates to an arrangement or attempted arrangement, whether legal or illegal, for the adoption of a child'.

SECTION 44: INFORMATION SOURCE TO RETAIN AND MAINTAIN RECORDS

Section 44(3)

In page 43 at line 20 to delete subsection (3) in its entirety.

Clann Project insertion: New Section 44(3)

In page 43 at line 20 to insert:

> 'Nothing in this Part shall interfere with the GDPR rights of relevant persons or parents.'

Clann Project insertion: New Section 44(4)

In page 43 at line 20 to insert:

> When the National Memorial and Records Centre is established, a primary information source shall make arrangements for the transfer of all relevant records to the National Memorial and Records Centre.

SECTION 45: OBLIGATION OF SECONDARY INFORMATION SOURCE IN RESPECT OF RELEVANT RECORDS

In page 43 at line 28 to delete 'if directed by the Authority' and insert 'whether or not it has been directed by the Authority'.

SECTION 46: OBLIGATION OF OTHER PERSON IN RESPECT OF RELEVANT RECORDS

Section 46(a)

In page 44 at line 13 to delete 'as soon as practicable' and insert 'immediately'.

Clann Project insertion: New Section 46(1)

In page 44 at line 13 to insert:

> 'The Authority shall make available a telephone number, email address and postal address to facilitate any person with knowledge of the location of a relevant record to make a report'.

SECTION 47: SECONDARY INFORMATION SOURCE OR OTHER PERSON MAY REQUEST TRANSFER OF RELEVANT RECORD

Section 47(1)(b)

In page 44 at line 18 to delete subsection (1)(b) in its entirety.

Clann Project insertion: New Section 47(1)(b)

In page 44 at line 20 to insert:

> 'A person other than an information source who is in possession of a relevant record is obliged to transfer to the Authority all relevant records in its possession'.

SECTION 48: AUTHORITY MAY DIRECT TRANSFER TO IT OF RELEVANT RECORD

Section 48(2)

In page 44 at line 31 to insert 'in line with guidelines issued by the Adoption Advisory Group' after 'shall'.

Clann Project insertion: New Section 48(6)(d)

In page 45 at line 25 to insert 'the guidelines issued by the Adoption Advisory Group'.

SECTION 49: AUTHORITY AND AGENCY TO RETAIN RELEVANT RECORDS IN RESPECT OF FUTURE ADOPTIONS

In page 45 at line 34 to delete 'relevant' and insert 'all' before 'records'.

SECTION 51: AUTHORISED OFFICERS

In page 47 at line 34 to insert 'in line with guidelines issued by the Adoption Advisory Group' after 'may'.

PART 8: AMENDMENT OF CIVIL REGISTRATION ACT 2004

(See Section 3.4 of our Briefing Note)

SECTION 52: REGISTER UNDER PART 3B OF CIVIL REGISTRATION ACT 2004

PART 3B: REGISTER UNDER PART 3B

SECTION 30F: DEFINITIONS (PART 3B)

Section 30F(a)

In page 48 at line 17 to delete subsection (a) in its entirety.

SECTION 30K: SEPARATE INDEX OF CONNECTIONS BETWEEN REGISTER AND REGISTER OF BIRTHS

Clann Project insertion: New Section 30K(3)

In page 51 at line 20 to insert:

> 'Nothing in this section shall interfere with the GDPR rights of the affected person.'

PART 9: MISCELLANEOUS

SECTION 54: PUBLIC INFORMATION CAMPAIGN

(See Section 8 of our Briefing Note)

In page 52 at line 19 to insert 'in line with guidelines issued by the Adoption Advisory Group' after 'shall'.

Clann Project insertion: New Section 54(1)

In page 52 at line 35 to insert:

> 'Prior to the design and launch of the public information campaign, the Authority shall consult advocacy and representative groups of relevant persons and parents and the Adoption Advisory Group as to the tone and content of the campaign.'

SECTION 55: DESIGNATION OF RELEVANT BODIES

In page 53 at line 2 to insert 'in line with guidelines issued by the Adoption Advisory Group' after 'may'.

SECTION 56: PROCESSING OF INFORMATION CONTAINED IN DATABASE AND RECORDS OF COMMISSION OF INVESTIGATION INTO MOTHER AND BABY HOMES

Section 56(3)
In page 53 at lines 16-17 to delete 'where he or she is designated under section 55 as a relevant body'.

Clann Project insertion: New Section 56(5)
In page 53 at line 39 to insert:

> 'Nothing in this section shall interfere with the GDPR rights of relevant persons or parents.'

SECTION 57: AGENCY AND AUTHORITY TO OFFER ASSISTANCE AND SUPPORT

(See Section 9 of our Briefing Note)

In page 54 at line 1 to delete 'and support'.

Section 57(1)

In page 54 at line 2 to delete 'insofar as practicable' and insert 'make every effort to'.

Section 57(2)

In page 54 at line 10 to delete 'such support as it considers appropriate' and insert 'assistance'.

In page 54 at line 11 to delete 'support' and insert 'assistance'.

Section 57(2)(a)

In page 54 at line 13 to delete 'support' and insert 'assistance provided by a trained archivist'.

Section 57(2)(b)

In page 54 at line 15 to delete subsection (2)(b) in its entirety.

SECTION 59: IMMUNITY

(See Section 6 of our Briefing Note)

In page 54 at line 35 to delete section 59 in its entirety

SECTION 63: COUNSELLING SUPPORT FOR PARENTS

(See Section 9 of our Briefing Note)

In page 56 at line 17 to delete 'for parents'.

Section 63(1)

In page 56 at line 18 to delete 'shall inform a parent who makes a statement to which section 38(11)(c) applies'.

In page 56 at line 18 to insert 'on the request of a relevant person or the parent of a relevant person shall inform the person'.

Section 63(2)

In page 56 at line 21 to insert 'with a practitioner of their choosing' after 'counselling support'.

Section 63(3)

In page 56 at line 23 to delete subsection (3) in its entirety.

Section 63(3)

In page 56 at line 26 to insert 'or the practitioner of a person's choosing' after 'the Agency'.

SECTION 64: REVIEW OF OPERATION OF ACT
(See Section 6 of our Briefing Note)

In page 56 at line 31 to delete '4 years' and insert '1 year'.

In page 56 at line 32 to insert 'The review will be open to public submissions and subject to meaningful engagement with affected persons and the Adoption Advisory Group.'

NEW SECTIONS

(See Section 10 of our Briefing Note)

Clann Project insertion: New Section 67

SECTION 67: AMENDMENTS TO ADOPTION ACT 2010

Section 89 of the Adoption Act 2010 is amended by deleting subsection (2) in its entirety.

Section 126 of the Adoption Act 2010 is amended by the insertion of the following subsection after subsection (4)—

(5) TUSLA: The Child and Family Agency shall be registered as an accredited body and thus regulated by the Authority.

Clann Project insertion: New Section 68

SECTION 68: AMENDMENT OF THE STATUS OF CHILDREN ACT 1987

Section 35 (1)(a) of the Status of Children Act 1987 amended by removing '(other than an adopted person).

Section 35 (1)(b) of the Status of Children Act 1987 amended by removing '(other than an adopted person)'.

Clann Project insertion: New Section 69

SECTION 69: AMENDMENT OF THE COMMISSIONS OF INVESTIGATION ACT 2004

Section 11 of the Commissions of Investigation Act 2004 is amended by deleting subsection (3) in its entirety.

Clann Project insertion: New Section 70

SECTION 70: AMENDMENT OF THE RESIDENTIAL INSTITUTIONS REDRESS ACT, 2002

Section 28(6) of the *Residential Institutions Redress Act 2002* is amended by the insertion of the following after 'this Act':

'A person' refers to those working for the RIRB and Review Committee and not applicants to the Scheme.'

Clann Project insertion: New Section 71

SECTION 71: AMENDMENT OF THE OMBUDSMAN (AMENDMENT) ACT 2012

Part I of the First Schedule is amended by adding the following subsection:

‘an entity on which functions are conferred by the Birth (Information and Tracing) Act 2022;’

Subsection (a) of Part II of the First Schedule is amended by deleting the subsection in its entirety.

Clann Project insertion: New Section 72

SECTION 72: ADOPTION ADVISORY GROUP

1. The Minister shall convene a permanent Adoption Advisory Group to inform the
2. operation of this Bill.
3. The group shall be comprised of:
    a. At least two representatives from groups advocating on behalf of relevant persons;
    b. At least two representatives from groups advocating on behalf of relevant persons who were adopted from Ireland to another country;
    c. At least two representatives from groups advocating on behalf of relevant persons from another country to Ireland;
    d. At least two representatives of groups advocating on behalf of parents.