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An Comhchoiste um Shláinte agus Leanaí

**An Tuarascáil ar an Iniúchadh Réamh-Reachtaíochta ar Scéim
Ghinearálta agus Ceannteidil an Bhille Uchtála
(Faisnéis agus Lorgaireacht)**

Samhain 2015

Houses of the Oireachtas

Joint Committee on Health and Children

**Report on the Pre-Legislative Scrutiny of the General Scheme and
Heads of the Adoption (Information and Tracing) Bill**

November 2015

31HHCN023

CHAIRMAN'S FOREWORD



The purpose of Pre-Legislative Scrutiny (PLS) is to allow Oireachtas Committees to examine the heads of legislation at drafting stage. The goal is to improve the overall quality of legislation. By engaging with experts and stakeholders at an early stage, the Committee can identify key issues.

The Joint Committee on Health and Children (the Committee) decided to carry out pre-legislative scrutiny on the Adoption (Information and Tracing) Bill because the proposed legislation represents a significant change in adoption information and tracing in Ireland. It is also a complex piece of legislation, which could particularly benefit from the PLS process.

To this end, the Committee has prepared this report for consideration by the Minister for Children and Youth Affairs.

The search for adoption information is an extremely sensitive area. It affects many people including adopted persons, birth parents, foster parents and families. The historical legacy in Ireland includes secretive, illegal and “informal” adoptions. As a result many Irish adoptees, parents and families were stigmatised by a negative experience of the adoption process.

In our hearings, the Committee listened to the first hand experiences of adopted people, birth parents and adoptive parents. This evidence is testament to the yearning that many adoptees and birth parents have to reconnect, and to find out where they came from. Adoptees also need access to medical / genetic information for their own medical needs.

I would like to pay tribute to all of the groups and individuals who contacted the Committee and spoke at our hearings. There is strong consensus by Committee Members on the need to enact the Bill.

There is also a certain urgency attached to introducing reforms in this area, as they will mainly affect an older cohort of adoptees, birth families and other people.





The Committee recognises the challenges faced in drafting the legislation, and the considerable efforts made by the Department of Children and Youth Affairs in this regard.

In making our report to the Minister, the Joint Committee on Health and Children hopes that the recommendations can help clarify and strengthen existing proposals.



Jerry Buttimer, T.D.
Chairman
Joint Committee on Health and Children

31ST DÁIL MEMBERS OF THE JOINT COMMITTEE ON HEALTH AND CHILDREN

			
Catherine Byrne TD (Fine Gael)	Ciara Conway TD VICE CHAIR (Labour)	Joe Costello TD (Labour)	Clare Daly TD (Independent)
			
Regina Doherty TD (Fine Gael)	Peter Fitzpatrick TD (Fine Gael)	Seamus Healy TD (Independent - WUAG)	Billy Kelleher TD (Fianna Fáil)

	
Eamonn Maloney TD (Labour)	Sandra McLellan TD Sinn Féin

			
Mary Mitchell O'Connor TD (Fine Gael)	Dan Neville TD (Fine Gael)	Caoimhghín Ó Caoláin TD (Sinn Féin)	Robert Troy TD (Fianna Fáil)

			
Senator Colm Burke (Fine Gael)	Senator Thomas Byrne (Fianna Fáil)	Senator John Crown (Independent)	Senator John Gilroy (Labour)

	
Senator Imelda Henry (Fine Gael)	Senator Jillian Van Turnhout (Independent)

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THE AIM OF THE BILL

The heads of the [Adoption \(Information and Tracing\) Bill](#) were published in July 2015, and provide an outline of the main measures envisaged in the Bill.

Under the current law, there is no comprehensive statutory right to adoption information. As is noted in the heads of the Bill:

The current practice is that information that could identify the birth parent is provided to an adopted person only where the birth parent consents to its disclosure or where the birth parent is deceased. (p. 53)

A key aim of the proposed Bill is to address the current lacuna in the legislation. The Bill proposes to regulate adoption information and search, and to provide additional information to current adoptees and other affected persons.

At the outset, it is important to note that there is general consensus among Committee members on the many positive aspects of the Bill. When enacted, it will represent an important milestone in adoption reform.

Among other measures, the Bill:

- provides for the establishment of a pro-active Adoption Register;
- provides for the regulation and sharing of information with adopted persons and for the provision of non-identifying information to adopted persons;
- enables individuals to indicate their preference regarding contact or the sharing of information;
- enables access to adoption information for categories of persons, including adopted persons, birth parents, certain relatives, and persons 'wrongfully registered' under the Civil Registration Act;
- includes a Statutory Declaration, to be signed as part of the tracing process, designed to cater for the 'competing rights to identity on the one hand and the right to privacy on the other hand', as reflected in head 13 of the Bill;
- includes an initial period of one year after the commencement of the Bill to allow an awareness campaign to take place to allow birth parents and others to indicate their contact preferences on the Register;
- gives Tusla, the Child and Family Agency, responsibility for operating the Register, providing information and tracing services, and supporting contact between the parties; and
- gives the Adoption Authority responsibility for collecting and safeguarding adoption records.

In addition, there will be an offer of guidance and support from TUSLA social workers to both adopted persons and birth parents. On future adoptions, provision is made to ensure that adopted persons receive a copy of their birth certificate and other relevant information.¹

It is beyond the scope of the PLS report to provide a detailed description of the heads of the Bill, as this would duplicate existing work carried out by the Department of Children and Youth Affairs. The heads of the Bill are publicly available on the [Department of Children and Youth Affairs website](#), accompanied by helpful background briefings and FAQs. For a short summary of the discussion on the general heads of the Bill, [see presentation by the DCYA the Joint Committee meeting held on the 8th of October 2015](#), to the Joint Committee on Health and Children. More detailed Committee discussions on various aspects of the Bill can be [consulted here](#).

¹ For a short summary of the General Scheme, see:
<http://www.dcy.gov.ie/documents/publications/20150727AdoptionInfoandTracingoerview.pdf>

STAKEHOLDER CONSULTATION

The Committee held three hearings as part of its stakeholder consultation process on October 8th, October 22nd and November 5th 2015. [View the stakeholder opening statements](#) which highlight different perspectives and issues raised in relation to the heads of the Bill. The following link contains the Committee's [Orders of Reference](#).

[Transcript for Meeting of Thursday 8 October 2015](#)

Ms. Noreen Leahy, Principal Officer, Adoption Policy Unit,
Department of Children and Youth Affairs

Ms. Anne Marie Kilkenny, Assistant Principal, Adoption Policy Unit,
Department of Children and Youth Affairs

[Transcript for Meeting of Thursday 22 October 2015](#)

Session A

Dr. Geoffrey Shannon, Chairman, The Adoption Authority of Ireland

Ms. Patricia Carey, Chief Executive, The Adoption Authority of Ireland

Session B

Mr. Fred McBride, Chief Operations Officer, Tusla, Child and Family Agency

Mr. Cormac Quinlan, Interim Director Policy & Strategy, Tusla, Child and Family Agency

Ms. Siobhan Mughan, Interim National Manager for Adoption, Tusla, Child and Family Agency

Session C

Dr. James Reilly T.D., Minister for Children and Youth Affairs

Anne Marie Kilkenny, Department of Children and Youth Affairs

Ms. Noreen Leahy, Department of Children and Youth Affairs

[Transcript for Meeting of Thursday 5 November 2015](#)

Session A

Ms. Helen Gilmartin, Adoptive Parents Association of Ireland

Ms. Susan Lohan, Director, Adoption Rights Alliance

Ms. Margaret Dromey, CEO, Treoir

Dr. Ruth Barrington, Chairperson, Treoir

Ms. Rhoda Mac Manus, Secretary, Adoption Loss, Natural Parents Network of Ireland

Mr. Paul Redmond, Coalition of Mothers & Baby Home Survivors

Session B

Mr. Martin Parfrey, Know My Own, Co. Cork

Ms. Mary Slattery, Know My Own, Co. Cork

Mr. Tom Walsh, Know My Own, Co. Cork

Ms. Deirdre Pemberton, Council of Irish Adoption Agencies

Dr. Conor O'Mahony, Faculty of Law, University College Cork

Dr. Fergus Ryan, Department of Law, NUI Maynooth

Ms. Patricia White, Social Worker, Post Adoption Service, Barnardos

Ms. Kathy Mc Mahon, Irish First Mothers Group

Mr. Fintan Dunne, Irish First Mothers Group

SUMMARY OF RECOMMENDATIONS

In considering the heads of the Adoption (Information and Tracing) Bill, the Committee acknowledges the considerable journey travelled by the Minister and officials in proposing these adoption reforms, which can have a beneficial impact on many adoptees and their families.

In general, there was strong consensus among Committee Members that:

- the Heads of the Bill contain a considerable number of positive measures, and that
- the reforms outlined in the Bill need to be implemented in a timely manner.

In order to assist the Minister in finalising the legislation, the Committee wishes to highlight a number of practical implementation issues, and areas where further clarity may be needed.

1. BALANCING RIGHTS TO ADOPTION INFORMATION AND CONSTITUTIONAL ISSUES

The heads of the Bill emphasise the need to balance the rights to identity, and access to information (by adoptees, birth parents and other affected parties), and the right to privacy. The challenge of achieving this was acknowledged by the Minister, who stated:

Finding a way of ensuring that both parties have access to this information, while at the same time respecting both parties' right to privacy, has been very challenging. But it is my belief that the provisions of this Bill strike that balance in a fair and respectful way.

Although there is a presumption in favour of disclosure of adoption information, the Bill includes measures for the non-disclosure of adoption information for '*compelling reasons, such as may endanger the life of a person*'.

Recommendation 1.1: The Joint Committee recommends that the definition of '*compelling reasons*' be further clarified and more tightly defined in the Bill. In cases where non-disclosure is sought citing '*compelling reasons*', this should be supported by medical evidence.

Recommendation 1.2: Non-identifying information on '*family medical history*' and genetic information is needed by adoptees so that their medical treatment can be based on accurate medical / genetic history. The Committee recommends that account be taken of this as a compelling factor *to provide* adoption information.

2. STATUTORY DECLARATION (HEAD 13)

The Bill requires adopted persons to sign a Statutory Declaration, stating that where birth parents indicate a preference not to be contacted, they will refrain from attempting to contact them, or from engaging in any further efforts to trace their birth parents.

However, based on the weight of evidence and the legal submissions received from witnesses, the Committee can find no convincing reason for the inclusion of a Statutory Declaration in the Bill.

Recommendation 2: Consideration should be given to excluding the Statutory Declaration provision from the Bill. This could possibly be replaced by an alternative provision where the applicant is required to attend one preparatory session to discuss and explore the issues concerning privacy and respect, before the Birth Certificate is released.

3. ADOPTION CONTACT REGISTER (HEAD 11)

The proposal to move from a *passive* register to a more *pro-active* register is to be welcomed. However, the Committee is concerned that the current proposals appear to discard the important information captured in the existing National Adoption Contact Preference Register (NACPR).

The consensus in the discussion at the Committee meeting is reflected in points raised by Ruth Barrington, Treoir, who stated:

On the point of the register, I can understand that there could well be data protection issues, but the role of the Data Protection Commissioner is to ensure that the law is observed in the access and transfer of data, so if this Bill provides a mechanism for people to transfer the data from the passive register to the active register, it would save on resources and it would give a much quicker solution to what everybody wants to see.

Recommendation 3: The Committee recommends that the Data Protection Commissioner be consulted and that options are examined on how to make best use of the existing National Adoption Contact Preference Register. For example, in the case of persons already registered and who indicated that they wish to have contact, it may be possible to seek permission to transfer some existing data to the new Register.

4. FEES (HEAD 12)

The Committee believes that fees for the provision of information and search services should not act as a barrier to anyone obtaining a service.

Recommendation 4: The Committee recommends that the Minister reconsiders the inclusion of fees for adoption and information services.

5. SERVICE DELIVERY (HEAD 10)

Under the Bill, Tusla will provide a centralised, streamlined adoption services. The Committee supports moves to provide a standard, more consistent service to adoptees, birth parents and foster parents. However, the Committee is also aware of existing delays for some adoption services. Concern was expressed during Committee sessions at the prospect of possible further delays to information and tracing services in the future.

Given the age profile of many service users, birth parents for example, it is important to ensure that services can be availed of within a reasonable timeframe. This may have implications for capacity and funding of services. The Committee also wishes to ensure that existing expertise / corporate memory and services provided by other agencies are not lost as part of the reforms.

6. LEAD-TIME AND INFORMATION CAMPAIGN

The provision of a one year lead-in, contained in the Bill, is seen as unnecessary for an ageing cohort of families, as it will create a further delay and could prevent a number of re-unions from taking place.

Recommendation 6: Consideration should be given to reducing the lead-in to a much shorter time period, and to holding a shorter, more intense information / awareness campaign over a six-month period, to include engagement with social media and a wide range of community groups who can help to raise awareness about the new Register.

7. WRONGFUL REGISTRATIONS/ILLEGAL ADOPTIONS

The Committee welcomes the proposal that persons who were the subject of *'informal adoptions'* and *'wrongful registrations'*, and birth parents of these persons, are covered by the provisions of the Bill, and can avail of the information and tracing services.

However, the Committee maintains that references to *'wrongful registrations'* or *'incorrect registrations'* suggest an administrative oversight, and do not adequately reflect the covert nature of many adoptions carried out in the past. The Committee further notes that there are no references to or acknowledgements of illegal adoptions in the Bill.

Recommendation 7: The Committee recommends that consideration be given to amending the terminology used.

Recommendation 7.1: In the case of the illegally adopted, consideration should be given to establishing a dedicated unit to actively investigate those cases. Where evidence comes to light

through investigation, or inspection of the files, any person believed to be illegally adopted should be discretely approached and informed of same, in line with the State's duty of care. All the actions needed on behalf of illegally adopted people must also be applied to natural mothers and fathers if their child was taken against their will and/or forcibly adopted.

8. APPROPRIATE FUNDING FOR SERVICES (HEAD 2)

Committee hearings raised issues in relation to funding for services, including necessary counselling, advice, support and mediation services, to be provided by Tusla under the Bill. Given the likely increase in demand for such services arising out of the Bill, the Committee believes that ring-fenced funding may be required to address the issue of delays and to ensure adequate counselling services.

Recommendation 8: The Committee recommends that there is a review of service requirements arising from the Bill.

9. RECORDS HELD / TRANSFERRED TO THE ADOPTION AUTHORITY OF IRELAND (HEAD 6)

The Committee heard from a number of stakeholders who raised issues in relation to the accuracy of legacy information held on record by the Adoption Authority.

Recommendation 9: The Committee recommends that measures be considered to afford birth parents / adoptees an opportunity to address inaccuracies identified in the records held by the State.

10. APPEALS (HEAD 13)

Recommendation 10: The Committee maintains that the period provided for Appeals is too short, and could possibly be extended to at least 28 days. Consideration could also be given to allowing Appeals to be heard at Circuit Court level, as this is viewed as a more appropriate forum for an Appeals process.

11. STEP – PARENT ADOPTION

Stakeholders highlighted current anomalies with regard to the treatment of step-parent adoption. There was consensus during discussion at the Committee meeting that, although this was outside the scope of the current legislation, reform in this area is required.

For example, Deputy Troy stated:

I do not know whether it can be addressed in this legislation, but if it cannot, I imagine it could certainly be addressed in the adoption legislation that has come about as a consequence of the children's rights referendum.

Recommendation 11: The Committee recognises that the issue of step-parent adoption is outside the scope of the Adoption and Information Tracing Bill. However, the Committee feels that the issues highlighted during the pre-legislative scrutiny process merit further consideration by the Minister for Children and Youth Affairs.

12. INFORMATION FOR ADOPTED PERSON WHERE ADOPTION ORDER IS MADE FOLLOWING COMMENCEMENT OF THE BILL (HEAD 14)

For all future adoptions (i.e. adoptions made following commencement of the Bill), Head 14 provides for copies of birth certificates, adoption orders and other information (as set out in Head 7 (1)) to be provided to an adopted person who is 18 years or older, and who applies for this information.²

The Committee acknowledges that Head 14 is a significant positive measure as it provides future adoptees with a statutory entitlement to adoption tracing and other information.

² Subject to a 12 week notification period to parents / guardians who placed the child for adoption.

13. OTHER ISSUES THAT NEED TO BE CONSIDERED

- *The role of accredited agencies who provide post-adoption services needs to be clarified and strengthened in the Bill.*
- *The Committee agrees that the system need to be subject to a degree of independent oversight.*
- *Definition of a “relative” needs to be clarified.*
- *There is a need to ensure that any provisions in the current Bill dealing with privacy do not present a barrier for adoption traces in future.*
- *A number of issues were raised by stakeholders regarding banished babies which require clarification.*

ISSUES CONSIDERED DURING COMMITTEE HEARINGS

This report has been prepared by the Oireachtas Committee on Health and Children as part of its pre-legislative scrutiny of the [General Scheme of an Adoption \(Information and Tracing\) Bill](#).³

The structure of the report is as follows:

The Committee's comments and recommendations are contained in pages 12 – 14 (above).

This is followed by a brief summary of the main themes arising from the three public hearings and stakeholder consultation on the heads of the Bill.

In general, the majority of stakeholders welcomed the publication of the General Scheme. Committee Members also expressed support for the general measures contained in the scheme. However, the stakeholder consultation also raised a number of key issues which remain to be addressed and clarified.

1. BALANCING RIGHTS AND CONSTITUTIONAL ISSUES

Many stakeholders addressed the need to balance the issues of the right to privacy and the right to identity. During the consultation process, this was identified as a core issue to be addressed in the Bill.

The Department of Children and Youth Affairs indicated that:

*The Heads [of the Bill] have been developed to achieve the balance between providing as much information as possible and respecting a person's right to privacy.*⁴

A number of submissions referred to the legal case *IO'T v B*, concerning people who were illegally adopted. In this case the Supreme Court found that a child enjoys an un-enumerated constitutional right to be told the identity of his birth mother. However, this right is not absolute, and must be balanced against the birth mother's right to privacy and anonymity.⁵

The Committee received a number of high quality legal submissions presenting evidence on this core issue.

Fergus Ryan, Law Lecturer in Maynooth University, interprets the Supreme Court decision as follows:

The overall tenor of the decision ... is that neither the adopted person's right to identity nor the parent's right to privacy is absolute. Neither right trumps the other.

Viewed from an equality rights perspective, some adopted adults who contacted the Committee expressed the view that their rights are being denied because of the birth mother's apparent superior rights.

Dr Conor O'Mahony, Law Lecturer in University College Cork stated:

If neither right is absolute, then either right may be qualified to an extent by the other. However, at present, the right to privacy of the mother is given absolute priority over the right to identity of the adoptee.

³<http://www.dcya.gov.ie/documents/legislation/20150805AdoptionInfoTracingHeadsOfBill2015.pdf>

⁴ Department of Health and Children - *Proposal to Draft Heads of a Bill on Adoption Information and Tracing [undated]*

⁵ [1998] 2 I.R.

Dr Geoffrey Shannon, Chairman of the Adoption Authority of Ireland, also presented his interpretation of the legal context to the General Scheme. In the *IO'T v B* case he argued that, as this case dealt with *de facto* adoption, it has limited application to the issue of legal adoption. He contended that:

*This judgment has been held up as a roadblock to legislating in this area. I take the view that it should not present a roadblock and is not of huge relevance in the area.*⁶

He continued:

What is of relevance – this is why I support the legislation – is that it [the General Scheme] attempts to deal with the past and the future in a manner that balances competing rights. It refers to no right being absolute and stipulates that nobody has an unqualified right, which is important, and that those who undertake that balancing exercise are subject to independent scrutiny.”

2. COMPELLING REASONS

The notes to the General Scheme state that there will be a ‘*presumption in favour of disclosure*’ but that the entitlement to information will be limited where the birth parent indicates there are ‘*compelling reasons, such as may endanger the life of a person*’ for the non-release of the details sought (Head 13, 20 and 24).

Legal academic Dr Conor O’Mahony argued that:

...the right to access a birth certificate is a minimum core of the right to identity. In order to comply with our international human rights law obligations, this should be an automatic entitlement of every adoptee, with no exceptions or qualifications.

Specifically, he took issue with the definition of “compelling reasons” contained in the General Scheme being ‘*such as may endanger life*’, contending:

...it is concerning that the definition may be construed as non-exhaustive, leaving the door open to other reasons being used to deny access to a birth certificate. In such an eventuality, it would be inevitable that the list of “compelling reasons” will grow over time and chip away at the minimum core of the right.

Dr O’Mahony made the point that where there is concern for the safety of the birth parent, there are “*extensive protections in both criminal and civil law for persons whose life or safety is threatened by another.*”

He argued that “*the Bill should make access to a birth certificate an automatic entitlement that cannot be refused in any circumstances.*”

Barnardos raised issues of consistency and standardised practice in decision making around ‘*compelling reasons*’. It also proposed that the Adoption Authority of Ireland or the courts “*should make a determination [on compelling reasons cases] as it effectively removes the adopted person’s rights to information in favour of right to privacy for the birth mother.*”

Barnardos also argued for the Bill to provide for compelling reasons why an adopted person or adoptive parent of a child under 18 *should need* the birth certificate – the General Scheme provides only for a compelling reason *not* to allow access.

The General Scheme provides that the decision on compelling reasons will be made by Tusla. On assessing ‘*compelling reasons*’, Tusla has stated that:

Compelling reasons can mean different things to different people. If there is an indication that a threshold is the endangerment of life then access to specialist assessment service

⁶ [Dr Geoffrey Shannon appearing before the Joint Oireachtas Committee on Health and Children, 22 October 2015](#)

⁷ Dr Geoffrey Shannon, as before.

may be required to determine the veracity of this as an objection or as a means of ensuring the person has access to specialist support. Further clarity would be welcomed on the ground for compelling reasons.

On the issue of compelling reasons, Senator Van Turnhout stated:

“We very much have to separate the information and contact. One has a right to information and nobody wants to put anyone into distress, but that cannot be a compelling reason in terms of one’s right to identity.”

The Committee also engaged with a number of adopted adults who will be directly affected by the proposed legislation. Their primary concern is in relation to access to original birth certificates and other personal information, as opposed to making personal contact. This information could be viewed as crucial to their identity. Some of this health information on congenital conditions for example, can help to inform decision-making in their life.

3. STATUTORY DECLARATION

Head 13 of the Bill provides that in order to obtain the information necessary to apply for their birth certificates, people adopted prior to the commencement of the legislation would have to sign a Statutory Declaration.

Signing the Declaration would be a requirement, where their birth parent has registered a preference of ‘no contact at present’ or has not registered any preference on the proposed new Register of Adoption Information. In this Bill, the adoptee would agree to respect the birth parents’ privacy, not make contact with them and not procure another person to make contact with them. This measure is designed to protect the privacy promised to and expected by some birth parents at the time of the adoption.

Stakeholders differed in their responses to the proposed statutory declaration. Tusla, the Child and Family Agency, noted that the General Scheme provides that the statutory declaration would only apply to adopted people and not to birth parents. It argued:

In the interests of fairness and equity any requirement of this nature should apply to all parties concerned.

Tusla also remarked that:

There is some concern that the consequences for breaching this [statutory declaration] is not set out in the legislation.

Know My Own, Barnardos and the Council of Irish Adoption Agencies (CIAA) were opposed to the Statutory Declaration, with the latter two recommending a compulsory ‘session’ for those receiving information - to discuss the implications of the information and the issues it raises for other parties. The CIAA stated:

...rather than a Statutory Declaration we would recommend that a similar approach be taken to that in other jurisdictions, where the applicant is required to have one session to discuss and explore the issues concerning privacy before the birth certificate is released. Guidelines for the structure of these sessions can be clearly defined.

Know My Own stated that it:

...believes that the ‘Statutory Declaration’ required to apply for a birth certificate is not necessary and its very proposal had the potential to continue to treat adopted people as second class citizens.

It argues that:

These proposed restrictions are abhorrent and are designed to ensure that fear and the myth of an adult adoptee ‘stalker’ continues.

In the event that a Statutory Declaration remains in the legislation, Know My Own called for the removal of two of the four undertakings set out in the General Scheme. These two provisions are those in which the person would be required to swear not to 'knowingly contact or attempt to contact' their mother or father, or to procure another person to do so.

The remaining undertakings relate more generally to 'respecting privacy' and to seeking assistance from the Child and Family Agency if further information or contact is desired.

On the other hand, Treoir, which advocates for unmarried parents and their children, stated that it would:

...welcome the requirement for adoptees to sign the Statutory Declaration agreeing to respect the privacy of the birth mother...We recognise that many birth mothers wish to have contact but for a small number the prospect of their secret adoption having to be disclosed to family is a source of distress and real fear.

4. ADOPTION CONTACT REGISTER

Head 11 of the General Scheme proposes that the National Adoption Contact Preference Register (NACPR) be replaced with an Adoption Information Register of Ireland (henceforth "the Register"). The new Register would be part of a pro-active service whereby information and tracing services would be offered to applicants by Tusla.

At present there are 11,500 entries on the existing NACPR. People whose names are on the existing register will not be transferred automatically to the new Register, rather they will be contacted and invited to apply to add their details to the new Register.

Barnardos, Know My Own and Treoir called for an automatic transfer of records from the current NACPR to the new Register. Barnardos argued that contacting people who were registered may risk breaching their privacy. For instance, this may be a consideration for older people who may have assistance from others in dealing with their correspondence. However, Treoir argued that if automatic transfer was not possible, then people whose names were on the existing register should be contacted, and stated:

A public awareness campaign will not suffice for this purpose.

The CIAA recommended that arrangements be put in place so that knowledge transfer could take place between those who have managed and operated the existing NACPR (in the AAI) and those who will be responsible for the new Register (in Tusla).

5. FEES

The General Scheme (Head 11) indicates that fees may be chargeable for services provided under the legislation, i.e. applicants may be charged fees in respect of information and tracing services provided by the Agency. Head 11 further provides that the Authority and the Agency may refuse services where fees are unpaid (p. 49).

In evidence before the Committee, Ms Noreen Leahy, an official from the Department of Children and Youth Affairs, stated:

There has been no decision yet regarding fees... it is a standard provision in the Bill. If we had not included it, we could be in trouble down the road, but there is no decision at present.⁸

There was general consensus at the Committee hearings that fees should, wherever possible, be excluded from the provisions of the Bill.

In their Opening Statement to the Committee, Treoir argued that:

The service [provided by the Adoption Authority of Ireland or the Child and Family Agency] should be free to adoptees and birth parents.

Barnardos stated that fees “*should not act as a deterrent*” to use of services.

6. SERVICE DELIVERY

In relation to tracing people the General Scheme provides that Tusla take ‘all reasonable steps’ to locate birth parents or adopted people. With a view to fulfilling this role, Tusla has called for further discussion on its ability to access records held by other State agencies. In particular Tusla highlighted the need to clarify:

...what expectations and resources will be provided to locate persons no longer residing in the jurisdiction.

In addition, Tusla indicated that the timeframes around sharing information and decision making set out in the General Scheme (that is, 12 weeks for sharing identifying information, eight weeks to determine if ‘compelling reasons’ exist) may present a challenge to securing the best outcome. It notes that this type of work – contacting those who did not think they would ever hear from other parties and seeking consent to release information or to contact – “*...requires sensitivity...*” and “*...if done incorrectly can damage the future potential of further contact...*”.

Ms Helen Gilmartin of the Adoptive Parents Association submitted that counselling is very important in tracing and information services:

Counselling is a vital part of the process....It can be very traumatic ‘revisiting’ the past. Counselling can bring great peace of mind, leading to a situation where reunion is welcomed, and ultimately successful.

Barnardos proposed that the procedures set out in the General Scheme be simplified “*...as the processes laid out in the Bill could seem quite complicated.*”

7. SERVICE LEAD – IN TIME AND INFORMATION CAMPAIGN

The General Scheme provides for a 12 month information campaign after commencement of the legislation. This time must elapse before an adopted person will have the statutory entitlement to the information required to apply for their birth certificate (other than where consent has been given or where other parties are deceased). The information campaign would seek to alert parties to adoption that they could register a ‘no contact at present’ preference on the proposed new Register.

The Coalition of Mother and Baby Home Survivors (CMABS), argued:

The one year lead in to the activation of the Bill is a major problem. This is an unrealistic provision when dealing with an aging community of adoptees and natural mothers...To delay this Bill for one year will undoubtedly lead to many of the survivors...missing any potential reunions.

CMABS proposed that the Bill:

Reduce the lead-in to the bare minimum and reassign the resources to be used over a year to a more intensive information campaign ideally over 30 to 60 days at the very most.

On the other hand, the CIAA contended that the 12 month information campaign would be “*an important step*” in the operation of the legislation.

Tusla raised issues about the potential limitations of such an information campaign in reaching all relevant parties:

There are concerns that even with the best public awareness campaign, elderly birth parents may be difficult to access and may not understand or have awareness of the changes proposed in the Bill. Additionally, people may no longer be resident in the country and therefore, the scope of the campaign may not reach them in other jurisdictions.

8. WRONGFUL REGISTRATIONS / ILLEGAL ADOPTIONS

The General Scheme provides for access to information and tracing services for those whose births were 'wrongfully registered' - where the birth of the child was recorded as occurring to the adoptive parents rather than the birth parents, thus falsifying birth certificates and making it very difficult for people to discover if they were adopted and for any party to an adoption to trace or find information.

The Know My Own group welcomed that the General Scheme "*at least acknowledged*" that such 'adoptions' had taken place. CMABS raised concern for those illegally adopted, citing the impact of false medical histories being provided to and by people who did not know their origins.

Know My Own made the point that, in order to succeed, this part of the legislation would require a proactive role from the Adoption Authority in gathering records. It called for the Adoption Authority to use all its powers to "*acquire the necessary information from 'information sources'*".

Know My Own further stated:

We urge them, if the necessary information is not voluntarily forthcoming, that they will utilise all the legal mechanisms available to them under this proposed legislation.

CMABS has called 'wrongful registrations' of births a "*polite way of describing illegal adoptions, potentially baby trafficking and even child abduction*". It believes the provisions of the General Scheme intended to direct Tusla to assist those who have been the subject of wrongful registrations to be "*too little, too late*". The group called for the establishment of an investigative unit in this area:

What is needed here is a dedicated small team of Civil Servants and Garda with modest resources, to actively investigate the case of any illegal adoptee who applies to the Unit.

This unit would also be able to "*discreetly approach*" anyone who their investigations indicated may have been illegally adopted. Such services would also be made available to natural relatives.

9. WAITING TIMES AND RESOURCES

Many stakeholders cited current long delays for people seeking information and tracing services. Ms Siobhan Mugan, Tusla, stated that waiting times for the start of searching is between two and four months for priority cases (people over the age of 70 and people with serious medical issues and concerns and for any matches on the contact preference register). For others, on "the generic waiting list it can still take two years."

Barnardos argued that success of the legislation would be contingent on resources and "*a greater availability of services and staff within Tusla*" than is presently the case. The CIAA noted the need for funding, stating that current waiting lists of up to three years (in adoption agencies as opposed to Tusla) were:

...unacceptable, particularly in the context of aging birth parents and equity of access to services for all parties to an adoption.

The CIAA also called for on-going support for parties to adoption that engage with services. It also recommended:

...similar to Adoption Information and Tracing services internationally, that funding for professional genealogists to support social work and research to enhance knowledge is essential in any proposed Information and Tracing Service.

Dr Fergus Ryan, Department of Law, NUI Maynooth, argued that:

Given that possibly as many as 100,000 may be affected (including both formal and informal adoptees and those whose births were wrongfully registered) the risk is that underfunded services will be overwhelmed, unable to cope, and subject to long delays.... With this in mind, it is vitally important that sufficient resources be available to the Agency and Authority to fulfil their new functions.

10. RECORDS HELD / TRANSFERRED TO THE ADOPTION AUTHORITY OF IRELAND

Stakeholders raised concerns about the accuracy of legacy records being transferred, or currently in the possession of the Adoption Authority of Ireland. In her evidence to the Committee, Rhoda McManus, from Adoption Loss, stated:

...it is essential that every mother be allowed to read her file in the presence of a social worker. She should be assisted to write a Statement to dispute inaccurate information and encouraged to name the father and provide information about him. She should not be allowed to remove anything from the file. In this way, the adopted person can decide who to believe – the information from his/her mother or the adoption agency. The present Bill does not allow for this necessary procedure.

11. APPEALS – FORUM AND TIMING

Dr Fergus Ryan noted that in a number of places the General Scheme provides for appeals of decisions and questions of law to be referred to the High Court. He states that the costs involved in High Court cases “...tend to be higher than those arising in Circuit or District Court proceedings”. He argues that:

Speedier and less expensive access to justice may be facilitated by also allowing appeals to be heard in the Circuit Court. (p.5)

Dr Ryan argued that the time allowed in which to make an appeal should be increased to at least 28 days:

It is submitted...that the timeframe for appeals proposed in the Scheme – usually 14 days from notification of the Agency’s decision – is too short and should be extended. (p.5)

Know My Own suggested that the Ombudsman for Children “be utilised in the appeals process before recourse to the High Court”.

In a different point on the choice of forum, highlighting the public nature of appeals to the courts and how this may be in conflict with the potential appellants’ motivation for appeal, the CIAA argued that:

...birth mothers who do not wish identifying information to be shared or contact would be unlikely to appeal this decision in view of their fear of exposure or of their privacy being breached.

12. STEP – PARENT ADOPTION

A number of stakeholders called for the Bill to address the issue of step-parent adoption, which is not provided for in the General Scheme.

Currently, in a step-family situation where an adoption is sought, the birth parent must relinquish their parental rights and the adoption of the child may then take place by both parents (the birth parent and step-parent becoming joint adoptive parents). Dr Conor O' Mahony stated that:

...there is no facility in place to allow a step-parent to adopt his or her partner's child alone in a manner which does not affect that parent's rights. As such, in order to enable a step-parent to become a legal parent through adoption, the birth parent of the child is required to adopt his or her own child alongside this step-parent. This is made necessary due to the fact that, in the absence of adoption by the parent, the legal parental rights and responsibilities of that parent would terminate upon the adoption by the spouse or partner and all parental rights would then vest in that partner.⁹

CMABS calls the current law in this area “ridiculous and woefully outdated”. It objects to the ‘forced relinquishment’ by the birth parent in this situation. CMABS suggests that the Adoption (Information and Tracing) Bill would provide an “ideal opportunity to shelve this degrading anomaly” which it says affects many families.

Dr O'Mahony recommends the adoption of legislation similar to that in England and Wales¹⁰ where the rights of the birth parents are not disrupted by the step-parent adoption.

13. INFORMATION FOR ADOPTED PERSON WHERE ADOPTION ORDER IS MADE FOLLOWING COMMENCEMENT OF THE BILL (HEAD 14)

For all future adoptions (i.e. adoptions made following commencement of the Bill), Head 14 provides for copies of birth certificates, adoption orders and other information (as set out in Head 7 (1)) to be provided to an adopted person who is 18 years or older, and who applies for this information.¹¹

In general the provisions of the General Scheme as they relate to future adoptions (Head 14) were welcomed. Treoir stated that the provisions in the General Scheme for future adoptions – where parties to adoptions will be made aware that information may be released in the future – mean that:

...so many of the problems we are experiencing today [regarding rights to identity/privacy] will no longer exist.

The Committee fully acknowledges that Head 14 is a significant positive measure as it provides future adoptees with a statutory entitlement to adoption tracing and other information.

14. OTHER ISSUES THAT NEED TO BE ADDRESSED

INFORMATION AND TRACING SERVICES OTHER THAN TUSLA

The General Scheme allows that ‘persons’ may be authorised to carry out information and tracing services. The CIAA recommends that the General Scheme include reference to ‘accredited bodies’, as it has argued for a continued role for currently accredited agencies in undertaking information and tracing services. Barnardos argued that the:

...role of accredited agencies such as Barnardos Post Adoption Service needs to be clarified and strengthened. Clients should be given some choice of service – many prefer to attend groups provided by an independent service in which they feel they can be more honest.

⁹

[Adoption Act 2010](#), s. 58.

¹⁰

[Section 46\(3\)\(b\) of the Adoption and Children Act 2002](#);

¹¹ Subject to a 12 week notification period to parents / guardians who placed the child for adoption

OVERSIGHT / INSPECTION / STANDARDISED PRACTISE

Dr Geoffrey Shannon argued that relevant systems should be subject to independent oversight. Referring to balancing competing rights he stated:

...those who undertake that balancing exercise are subject to independent scrutiny. In any system it is important that independent scrutiny occurs.

BIRTH FATHERS

Dr. Fergus Ryan notes that information on birth fathers may be more difficult to access than information on birth mothers, as their names may not be recorded on the Register of births. Treoir recommended that Head 7 include a provision that the Adoption Authority would keep information on the birth father as well as birth mother.

DEFINITION OF A RELATIVE

The General Scheme provides that, in certain situations, relatives of adopted people and of birth parents may apply for information. The definition of a relative includes a parent, guardian, spouse and civil partner of a person as well as a grandparent, child, sibling, grandchild, uncle or aunt. Dr Fergus Ryan has argued for the inclusion of other persons in the definition:

It [the definition in the General Scheme] does not include, however, the cohabitant of a person. It is not clear, moreover, whether it includes the civil partner or cohabitant of a parent of the person. It is submitted that the definition of relative should be expanded to include these persons.

15. CONCLUSION

In considering the heads of the Adoption (Information and Tracing) Bill, the Committee fully acknowledges the road travelled by the Minister and the Department of Children and Youth Affairs to progress the legislation.

In making our report to the Minister, the Joint Committee on Health and Children hopes that the recommendations can help clarify and strengthen existing proposals.

In general, there was broad support among Committee Members on the need to ensure the reforms outlined in the Bill are implemented in a timely manner.

The purpose of the pre-legislative scrutiny process is to highlight implementation issues raised at an early stage. A core issue identified in the pre-legislative scrutiny meetings was in relation to the issue of identity, compellability and the need for a Statutory Declaration.

The Committee received a number of high quality submissions on this and other issues from a wide range of stakeholders during its consultation process, copies of which accompany the Committee's report.