



**ADOPTION RIGHTS ALLIANCE  
JFM RESEARCH**

**29 October 2020, 1.45am—For Immediate Release**

**Adoption Rights Alliance, Justice for Magdalenes Research and the Clann Project welcome Government Statement on Mother and Baby Homes**

Adoption Rights Alliance (ARA), Justice for Magdalenes Research (JFMR) and the Clann Project, the groups responsible for the recent email campaign on the Mother and Baby Homes Commission archive, have warmly welcomed the Government’s announcement on access to information for those affected by ‘historical’ abuses and the concrete measures proposed.

ARA, JFMR and the Clann Project welcome the Government’s acknowledgement that many decades of secrecy have caused ongoing and unnecessary harm to people already profoundly failed by our State and society. Over the past few weeks, the citizens of Ireland and people from across the diaspora have joined with survivors of institutions, adopted people, natural mothers and relatives of the deceased and disappeared to reject this continuing abuse. The Government has listened, which is a vital first step in attempting to redress the harm caused.

The Government’s commitment to work closely with the Data Protection Commission to fully vindicate the rights of people who experienced forced family separation abuses is a clear and welcome departure from previous policy. The right of access to personal data is both a core element of the EU Charter of Fundamental Rights and protected by the EU General Data Protection Regulation (GDPR), making it supreme over any conflicting Irish law. As the Government now recognises, existing EU law requires the Irish State to move away from its reflexive habits of secrecy. Access to information is crucial to attaining any form of accountability for the serious and systematic abuses of the 20th century. Truth-telling is necessary in order to ensure that similar abuses never happen again.

The Government is promising additional resources to ensure the immediate implementation of GDPR rights. **We call for the swift recruitment of data protection law expert committees, who are independent of government Departments and TUSLA**, to administer the data protection obligations of the Department and TUSLA. In addition, independent expertise should also be provided to the Adoption Authority of Ireland and other controllers of adoption and institutional records. Our work over many years with data protection lawyers including Fred Logue, Simon McGarr and Hogan Lovells International LLP has heightened our awareness of the basic but extremely harmful mistakes in legal interpretation that currently define the practice of state and non-state controllers of institutional abuse and adoption-related

records. The ‘Collaborative Forum of Former Residents of Mother and Baby Homes’ has repeatedly advised the Government of these problems. Therefore, it is essential that experienced experts are in place.

Importantly, the Government’s announcement has relevance for its handling of the de facto ‘sealed’ archives of the **McAleese Committee and the Ryan Commission**, among other Commissions of Inquiry and additional sources of records of closed, secret, forced adoption and related ‘historical’ abuses. The GDPR also applies to non-State data controllers. Beginning with the recruitment of independent data protection law experts to the Department of Children and TUSLA, the Government needs to comprehensively overhaul the implementation of GDPR in relation to all records of ‘historical’ abuse: as we argued last year when resisting the Retention of Records Bill 2019.

It is important to note that the definition of personal data under EU law is extremely wide: ‘personal data’ means ‘any information relating to an identified or identifiable natural person’ and even includes information which may not in itself identify a person but when pieced together with other information can do so. It includes personal identity and family background. It includes a person’s testimony of abuse. Furthermore, we believe that people who have suffered abuse have a particularly strong entitlement to ‘mixed’ personal data which records their treatment by others in positions of responsibility over them.

Regarding the promise of a **national archive of records related to institutional trauma during the 20th century**, we warmly welcome this 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. **The State must depart from previous habits of excluding and compartmentalising people. Nobody can be left behind.** We believe that such a venue will prove to be a place not just to mourn but will also be a place of reflection and inspiration for how we can imagine a more inclusive and creative future for us all. Justice is created through the values we hold, and by recognising and honouring each other in our diversity. Justice is an on-going process, a horizon rather than a destination and we believe that this venue has the potential to provide a national site of conscience where we reflect on how we are living up or not to our ideals.

We look forward to working with the Oireachtas Committee on Children on the legislation to underpin the national archive, which should include in its remit the provision of information to survivors and adopted people. In the short term, this legislation can also provide for information release from wherever records are currently held. Although GDPR applies already, dedicated legislation is desirable to give further clarity on personal data rights, but also crucially to allow access to those affected, first and foremost, to broader administrative records. International examples show that administrative records of how systems operated (not survivors’ personal data) can also be made available publicly if anonymised appropriately. This new legislation must also repeal the ‘gagging order’ on residential school survivors under section 28(6) of the Residential Institutions Redress Act 2002, so that they are free to deposit their testimony for the national historical record if they wish.

Since 2018 we have been working on a draft Bill with a broad coalition of survivors, academics and human rights experts, which will ensure that Irish law gives full effect to survivors’ and adopted people’s rights to identity, truth and privacy. As a coalition we have consulted with personnel from the Stasi Records Agency

in Berlin as well as considering comparative practice in Scotland, Australia, Canada. We look forward to publishing this draft Bill shortly and to sharing it with the Oireachtas Committee for consultation.

The timeline for publication of the Report must allow the Attorney General to decide if prosecutions might be impacted by the release of sections of the report and we hope that the Garda Commissioner is also involved in that deliberation about what prosecutions might result. This is important work and should be given very careful consideration.

We welcome the provision of health and well-being supports for those who wish to avail of them. These services should be rolled out in consultation with advocacy and representative groups.

We also welcome the Government's commitment to urgently proceed with exhumations at Tuam, although we note that the Coroner currently possesses powers in this regard and that Tuam is not the only location whereby exhumations might be required. The rights of family members to information about their deceased and disappeared relatives must be paramount and the Government's draft legislation on exhumations should be reviewed to ensure that all available records are made available to them.

We thank the Government for its honesty in admitting the mistakes of the past week, and we look forward to working together on this matter.

Ends.