

BRIEFING SESSION FOR STAKEHOLDERS ON BIRTH INFORMATION AND TRACING HEADS OF BILL – THURSDAY 20TH MAY 2021

Key themes emerging from email questions submitted on the Heads of Bill

Part I – Questions on Heads of Bill

1. Personal accounts

Detail

Many people sent in very specific questions about their own circumstances, and accounts of their lives and searches for information.

Response

I greatly appreciate the time which people took to set out their experiences, and their accounts of trying to access their birth and early life information, all of which I have read. While it is not possible for me to answer details about individual cases, I hope that the responses I give today will cover the central queries people have and that this legislation will be of use to you in gaining access to your own histories.

People have also raised, in their questions, detailed questions or suggestions about the heads of the bill, which will be taken into consideration in the next phase, which has just commenced and which involves drafting detailed legislation on the basis of those Heads.

2. Seeking reassurance

Detail

Many of the emails sought reassurance that this bill will give them access to birth certificates and early life information. Many spoke of the frustration and hurt which the lack of access to this material has caused them in the past.

Response

I appreciate the depth of feeling among adoptees, people who were boarded out, and people who whose births were illegally registered. I can only imagine how hurtful it must be to be denied something which others in Ireland are entitled to, and indeed take for granted.

All I can say is that I have listened to stakeholders on this issue, and I hope that this legislation will be able to right a historic wrong by providing access to birth certificates and early life information. I can assure you that it does provide for clear and full access to birth certificates and early life information in all cases.

3. Practical questions

Detail

A number of people asked practical questions about how the new legislation will operate, in particular how and where they should apply for their information.

Response

It is important to note that the legislation must go through the Dáil and the Seanad before it is enacted and before people can apply.

However, there will be an awareness campaign alerting the public to the start date of the legislation and its provisions. This will be a nationwide campaign and will also be run in other jurisdictions such as the UK, the USA and Australia. This campaign will be primarily to communicate to natural parents the impact that the legislation will have, in terms of release of birth information, and will also publicise the new statutory Contact Preference Register.

In terms of where you will be able to apply for information, the intention is that you will be able to apply to whoever holds the records. The approach is to open up access to records where they are located. In a similar manner to Subject Access Requests under GDPR, people will be able to apply to any relevant body that may hold information about them.

Applications for birth certs and birth information can only be made after three months has elapsed from the date the legislation is commenced. This is to allow natural parents time to lodge a no contact preference which will not prevent release of the birth information but will allow for contact preferences to be communicated at the time of providing information.

I understand that, currently, a lot of relevant records are held by Tusla and the Adoption Authority and, therefore, it is likely that most people will apply to either or perhaps both organisations.

The intention is to designate other bodies that are considered relevant. This could include statutory bodies such as Government Departments or Agencies, as well as non-statutory bodies, such as religious congregations, who may hold records which contain birth and early life information.

For example, my own Department will be designated to allow people to make applications, under this legislation, for information held about them in the Archive of the Mother and Baby Home Commission.

4. Resourcing

Detail

Questions were asked about resourcing of the information and tracing service, including staffing and recruitment.

Response

I am aware that additional resources will be required to make this legislation work properly. I am committed to engaging with Tusla and the Adoption Authority of Ireland to ensure that the information and tracing services will be adequately resourced and that the staff involved in delivering the services have all the necessary skills and competencies.

5. Persons living abroad

Detail

A number of people asked if people living abroad would be able to access their records from where they are living now.

The answer to this is yes. You will **not need** to be resident in Ireland to apply to access records or apply for a tracing service. I know that a large number of people who will want to use this service, live abroad. There will also be people who may have been adopted from Ireland to another country.

6. Cross Border issues

Detail

One person questioned whether the proposals cover cross border tracing and information sharing and said that she thought that both Stormont and Dáil Éireann need legislation.

Response

Thank you for raising this important issue.

I know from some of the personal stories I have heard from survivors that there were children who were born in the Republic of Ireland and then adopted in the North of Ireland and visa versa. What I can say is that, where records are held here in the Republic of Ireland, access will be possible, wherever that person is now living or was adopted to.

I understand that Northern Ireland already allows full access to birth information, on attendance, in some cases, at an information session.

I will continue to engage on this matter, as necessary, with my colleagues in the North.

7. Cost of service

Detail

People asked if there would be a cost to them of using the service, and of obtaining a copy of a birth certificate from the GRO.

Response

Persons who apply to the GRO for a copy of their birth cert will be charged the same amount as anyone else who applies for their birth certificate. I understand the fee charged is currently €20.

There will be no charge for applications for the release of information from relevant bodies, this will include a copy of a birth certificate if it is held on a file by Tusla for example. There will be no charge for any of the services under the legislation, including registering on the Contact Preference Register for an application to trace a person. To be clear, the only charge is for a person who applies to the GRO for their birth certificate, which is the charge which applies to all applications for birth certs.

8. Prioritisation

Detail

A number of people made different suggestions on how access to information and tracing service or requests for information should be prioritised.

Response

Tusla Adoption Services operates a prioritisation system for information and tracing which ensures that priority is given to those in greater need such as applicants over 70 years or those with serious medical illness. I would not expect this to change, though it is an operational matter for Tusla.

However, I would say that this legislation brings clarity about what can be released, with many categories of information capable of being released automatically on application. This should speed up the service. The legislation also provides a legal basis for Tusla and the Authority to access information to assist in tracing individuals, so this should also assist in making the process more efficient and effective.

9. Amending a birth certificate

Detail

A number of people asked if it would be possible to amend a birth certificate, in cases of illegal birth registration, as well as in cases where a natural father has subsequently become known, including through the use of DNA analysis.

Response

Thank you for bringing these issues to my attention. The proposed Birth Information and Tracing legislation includes specific provisions to support the correction of the birth register in cases of confirmed historic illegal birth registration.

More generally, these matters fall under the remit of the Department of Social Protection and the General Register Office. My current understanding is:

- Section 63 of the Civil Registration Act 2004 relates to "Correction of errors at request of persons having an interest". Specifically, Section 63 (2) states:
(2) On the application in that behalf of a person having an interest in the matter to a Superintendent Registrar in writing, he or she may—
 - (a) correct in the manner specified by an tArd-Chláraitheoir a clerical error in any register maintained under section 13 , or
 - (b) correct an error of fact in a register specified in the said paragraph (a) or (d) if the person gives to the Superintendent Registrar such evidence as he or she considers to be adequate and a statutory declaration, in a form standing approved by an tArd-Chláraitheoir, of the facts concerned made by—
 - (i) a person required by this Act to give to the registrar the required particulars in relation to the birth, or death, concerned, or
 - (ii) if such a person as aforesaid cannot be found, two credible persons having knowledge of the facts concerned.

- Declaration of Parentage is provided for by Section 35 of The Status of Children Act, 1987 and in The Child and Family Relationships Act, 2015. The Act allows for person to apply to the Circuit Court for a declaration stating that they are the father/mother or parents of a child OR for a person to apply to the Circuit Court for a declaration stating that the named person is their father/mother or parents of the applicant. An application can be made through a solicitor or directly to the courts.
- Once a Declaration of Parentage has been granted it is submitted to the GRO along with a form for re-registration and the birth is re-registered with the new information.
- Forms for an amendment to a birth registration using a declaration of parentage (other than DAHR (Donor assisted Human Reproduction) birth) are not available online. These forms are available from the local civil registration office.
- A declaration of parentage can be made even if parent is deceased.
- A balance of probabilities test is applied by the Court in deciding whether the declaration is to be granted or not.
- The use of blood tests in determining parentage is provided for in Section 41 of The Status of Children Act, 1987 and S.I. No. 215 of 1988 and is expanded to "bodily samples" under the Child and Family Relationships Act 2015.

10. Timing of the bill/legislative process

Detail

People asked when the bill will be enacted and implemented.

Response

I cannot give a precise timeframe, as the speed of passage of the bill through the Oireachtas will be out of my hands. However, I think that there is a consensus across all parties that this is an urgent piece of legislation. Therefore, I would be hopeful that the bill will be supported by the Government and Opposition, and should pass through both houses of the Oireachtas relatively quickly. Although, as I say, this will be out of my hands.

The next step is pre-legislative scrutiny where the Joint Oireachtas Committee on Children, Disability, Equality and Integration will consider the Bill in detail, and will invite interested parties to give their view on it. I have already referred the legislation to that Committee and met informally with them on it, and they are aware of the urgent nature of this legislation.

Officials in my Department are already working with Tusla and the Adoption Authority of Ireland to prepare for implementation.

I want to see this legislation in place and working for people as quickly as possible.

11. What happens where a natural mother requests no contact?

Detail

People sought clarity on the process to be followed where the natural mother requests no contact.

Response

Where a natural mother requests no contact, the applicant must attend an information session before the birth cert or birth information is released (see further detail in section 12 below, re information session).

The Heads provide that a natural parent registering a no contact preference will be informed of their right to access counselling via Tusla.

I will consider, in the detailed drafting of the legislation, whether an information session can be dispensed with, where the natural parent in question is deceased.

12. How does the information session work?

Detail

People sought information on the information session, where a natural mother requested no contact. Some questioned the need for a social worker, and one suggested a psychologist would be more appropriate.

One person noted how hurtful it would be to hear that a natural mother does not want contact, and queried what support would be available for people in these circumstances.

Response

Where a natural mother requests no contact, this fact will be recorded on the contact preference register held by the Adoption Authority. Then, when a person applies for a birth certificate or birth information, the relevant body who receives the application must first check with the Adoption Authority to see whether the natural parent registered any contact preference.

If a preference for no contact is registered, then the person will be informed of this via an information session, to be provided by Tusla or the Adoption Authority, and the birth certificate or birth information will then be provided to the applicant.

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

I note that the question was asked about why the session is conducted by a social worker and that it would be better that a psychologist held the session. I also note that another question was asked as to why a social worker is required at all. While I will look again at these issues, I provided in the first instance that it would be a social worker, in acknowledgement of the sensitive and personal nature of the circumstances, and of some of the information being communicated.

Another question was how hurtful it would be to know that your natural mother had asked for no contact and what supports would be in place. I can confirm that the Heads of Bill do provide that both Tusla and the Adoption Authority can offer support to a person who makes an application under the legislation.

13. Support for Mothers

Thank you to the persons who submitted the question related to support for natural mothers.

I know that women who found themselves pregnant out of wedlock had little or no choice but to put that child up for adoption. While every pregnancy is unique and every women's story is different, I think it is fair to say that **many** woman with a crisis pregnancy experienced the same treatment; shame, stigma and a shunning by society with no support to raise the child themselves. It was the same throughout the country and for both Catholic and Protestant women.

I know that some of these women have lived with this all their lives and may not have been able to tell their families, they may have told no-one. And it is to these women in particular that I want this message to go to; this legislation is about opening up records so that persons can know who they are. If a person wants to meet you they will apply for a trace and this will be managed by a social worker and you can decide whether you want contact or not.

I acknowledge the importance of supporting natural mothers. The Heads of Bill does contain a provision regarding counselling support for parents who don't wish to have contact but I am happy to consider further. I intend to meet with natural and first mother groups in the near future and I will listen closely to what supports they believe would be helpful.

14. Paternal loss

Detail

One person raised a concern about the paternal loss experienced by adopted individuals and the impact of adoption on natural fathers.

Response

It seems that in a lot of historic adoption there was often no father recorded on the birth certificate. However, in some cases, the adoption file may note the putative father's name or make reference to him such as his age or occupation or note comments that the mother may have made about him. This would be the only information available regarding the putative father and, therefore, access to that type of information is key to any hope of identifying the individual concerned. That is why the Heads of Bill allow for the access to a natural father's name if it appears on a record.

Thankfully, modern day adoption legislation and practice ensures that the rights of natural fathers are fully vindicated.

15. Information from multiple sources

Detail

People wanted to know if they could access all of their records in one place.

Response

The central purpose of this legislation is to enable access to records as quickly as possible. This was my priority. Therefore, under these proposals the records are not being centralised.

This approach recognises the need to move ahead urgently with Birth Information and Tracing legislation, while working in the medium-term towards the creation of a centralised repository or archive which may sit within the National Memorial and Records Centre to which the Government is committed.

The reality at present is that Tusla and the Adoption Authority hold the majority of records and it may be that one application to either of those agencies will provide you with all of your records.

Equally, the Archive of the Mother and Baby Homes Commission of Investigation, maintained by my Department, contains copies of all documents submitted to it and one application to that Archive may provide a person with all of the existing records related to their birth and early life.

Alternatively, it may be that your records are in a variety of places, for instance, records related to your birth in a mother and baby home held by Tusla and in relation to your boarded out placement held in the Archive maintained by my Department. In this latter case, the Heads include provision for Tusla or the Adoption Authority to assist a person in making applications to the various relevant bodies.

There were a couple of questions relating specifically to the files of Cunamh, formerly known as the Catholic Protection & Rescue Society of Ireland. The Adoption Authority of Ireland are currently engaging with the Board of Cunamh about the transfer of files to the Authority.

16. Do people get originals or copies of records?

Response

The Heads of Bill explicitly state that copies of records are to be provided. This will be a copy of the original record itself.

17. Does the bill cover records of time in Mother and Baby Homes?

Detail

People asked if this bill includes records of their time in Mother and Baby Homes.

Response

The answer to this is yes, the Bill will provide for a person's time in a Mother and Baby Home. I know that some children lived a number of years in a Mother and Baby Home and I wanted to ensure that the definition of early life and care information covered them. For instance, the definition of early life information includes '*information on the person's health, physical or emotional development*'. The intention here is that any records relating to their stay in the Mother and Baby Home will be made available.

18. Vaccine trials

Detail

A number of emails were received where people were unsure whether they had been involved in vaccine trials, and wished to know if this information would be made available under this legislation. Another person stated how traumatic it is to have to consider you might have been part of a vaccine trial. They wanted to also know whether the focus will genuinely be on allowing full and complete access to information relating to periods spent in care.

Response

Under the proposed legislation, a person will automatically be provided with any medical information existing in the records which relates to themselves, including whether they received any vaccines, or if they had been a participant in any vaccine trials. Information on vaccine trials was obtained under Order of Discovery by the Commission of Investigation into Mother and Baby Homes

and is contained within the Archive of the Commission which is now maintained by my Department. I can confirm that this information will be made available automatically to individuals.

Additionally I have been engaging with GlaxoSmithKline and in a recent meeting GSK assured me that they have made records available to people who were subject to vaccine trials under GDPR Subject Access Requests and will continue to do so.

19. The contact preference register

Detail

There were questions about how the new preference register would operate, and what would happen to the old register, and the information on it.

Response

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

Where an individual registers as wishing to have contact with a specified person, and that specified person has previously registered, and indicated a wish for contact, the Authority can match the individuals and facilitate a reunion.

The legislation also provides for the transfer of all information, including contact preferences, from the existing National Contact Preference Register to the new Register. All current entries on the National Adoption Contact Preference Register will be transferred over to the new Contact Preference Register. Following the transfer and after a period of six months, the National Adoption Contact Preference Register will be deleted.

20. Pre 1953 adoptions

Detail

One person said they were unofficially adopted prior to 1953, and would they have access to birth and early life information under this bill.

Response

The answer is yes. People adopted prior to 1953 will be considered a relevant person and will be able to make applications under this legislation.

21. Foster homes

Detail

Will information from foster homes be included in this bill?

Response

The definition of relevant person includes persons who were boarded out, which was the precursor to the foster care system, and the definition of care arrangement includes foster care. Under the

legislation, people will be entitled to apply for care information, which will include who cared for them, at which location, and for what duration.

22. Will organisations be compelled to hand over records?

Detail

One person asked if individuals and organisations will be compelled to hand over information/records under the bill.

Response

Relevant bodies will be required to respond to applications under the legislation and provide the requested birth, early life, care or medical information.

Secondary information sources will be required to safeguard records, and transfer records to the Authority if so directed by Authority.

In drafting the detailed legislation, I will give careful consideration to what bodies should be designated as either of the above. This will include specific consideration of the religious congregations, given the significance of the records they hold.

23. Where records don't exist

Detail

A number of emails referred to cases where a person had previously sought records, and been told that they do not exist. They ask if the legislation will be of assistance to them.

Response

It is regrettable that, in many cases, the information which people are seeking simply may not exist. This would be the case no matter what legislation is passed. This comes up again and again in attempting to address the legacies of the past. Records may have been lost or destroyed, either through malice, ignorance or simple passage of time.

However, the legislation will make it very clear that individuals have a right to apply for, and access their records. I am hopeful that this may result in more records being made available to individuals.

This legislation recognises the significance of safeguarding records, and attempts to address this by introducing penalties for any person who conceals, destroys, mutilates or falsifies a relevant record.

24. Siblings

Detail

A number of people asked if the legislation will allow them to have access to information regarding siblings who were adopted.

Response

This legislation is grounded in the importance of a person knowing their origins. My priority has been to provide for access by the individuals themselves who are adopted persons, who were boarded out or whose birth was illegally registered. Providing such access involves a delicate balancing

between the identity rights of the individual and the privacy rights of natural parents. It is not possible to extend this beyond the relevant person themselves.

However, I am currently seeking legal advice as to whether access by next of kin can be provided for, where the relevant person themselves is deceased.

It is worth remembering that the tracing service and contact preference register are also important mechanisms which are available to people looking for contact or information on relatives.

25. Records beyond early life information

Detail

One person asked if the legislation would allow them access to records from when they were in an industrial school (up to age 15).

Response

This legislation is about accessing birth and early life records, including information which is shared personal data and requires, therefore, this bespoke legislative approach. It is about the person being able to answer the pressing question of who am I, who are my parents? The focus is primarily on origins and early life.

26. Use of Client identity service by the Department of Social Protection

Detail

One person asked whether the proposals include provisions that will allow the Department of Social Protection to process data for tracing purposes.

Response

This has been problematic since the introduction of GDPR. The Heads of Bill provides a robust basis for sharing of data between Tusla/ AAI and others such as the Department of Social Protection for the purposes of tracing services and this will address this issue.

27. Question about recent Information Commissioner Decision

Detail

A recent decision by the Office of the Information Commissioner was referred to where a refusal to grant access to records and parts of records under section 37(1) of the FOI Act was affirmed.

Response

Consideration will be given to this matter though it is worth noting that applicants will be provided with more information under the Birth Information and Tracing Heads of Bill, than is currently available under Freedom of Information legislation.

Part II – Questions on related matters

28. That a birth certificate could include both a natural mother and an adopted mother's surname

Detail

A person recently applied for a birth certificate for their son and the form required their mother's surname. The person is adopted and thinks the form should allow for the surname of both the natural mother and adopted mother so the adopted person does not have to choose.

Response

I can understand the dilemma this could create for a person. This is a matter for the GRO and how they operate their procedures under the Civil Registration Act.

29. Historic v current adoption practice

Detail

One person highlighted how practice in the past, while now considered to be a historic injustice, was done by people who often believed what they were doing was right. An example they give was the secrecy around adoption, which was to protect people from the stigma of illegitimacy, and in line with the "clean break" theory of adoption prevalent at that time.

Response

It is acknowledged by all parties that adoption in the past was a secretive process, carried out without due respect for the rights and dignity of those involved. Such practice in adoption reflects wider societal prejudices of the time.

Today, the safeguards in the adoption acts ensure that the best interests of the child are the paramount consideration in all adoption cases, and in every step of the process. Modern day adoption legislation and practice also ensures that the rights of all involved are vindicated, including natural fathers, within the overarching framework of working for the best interests of the child involved.

30. Criticism of MBH report

Detail

A number of emails made general criticism of the Commission's report.

Response

I recognise that some of the conclusions, grounded in a legal approach and analysis of 1.3 million pages of evidence, can feel removed from the grief, pain and trauma of the individual lived experience of many survivors and I note that the report does not represent a conclusion. Rather, it represents the backdrop for the State's apology to those who have suffered and also a starting point from which we can move forward. The Government is committed to build on the spirit in which the apology was made, to take action and make appropriate reparation.

In responding to the Final Report of the Commission of Investigation, the Government approved development of a Strategic Action Plan encompassing a suite of 22 measures across 8 themes, which include the following:

- A survivor-centred approach
- Apology
- Access to Personal Information
- Archiving and Databases
- Education and Research
- Memorialisation
- Restorative Recognition

The Government is committed to taking a survivor-centred approach, characterised by consistent engagement with former residents and their representative groups. The design and delivery of the measures within the Government's 22 point Action Plan will be directly informed by the views of survivors, their families and advocates including those who live outside the jurisdiction.

31. Wider MBH response (redress/reparations)

Detail

At least one email referred to issues around reparations and redress funds, and the wider recommendations of the Commission on Mother and Baby Homes.

Response

The birth information and tracing bill is focused on providing access to birth information and an effective tracing service.

This bill is only one part of the wider response to addressing the legacy of the past. I will continue to work with my Cabinet colleagues to progress the other recommendations of the Commission.

On the Restorative Recognition Scheme, participants in this webinar will have received an update from my Department earlier this week in relation to progress on the scheme. The IDG hope to have proposals with me in the coming weeks.

32. Historic burials

Detail

A number of people sent emails about their search for information on others, particularly siblings, who died in mother and baby homes, and asked if this legislation would help them.

Response

This legislation deals with access to birth and early life information. Separately, I am progressing the Certain Institutional Burials (Authorised Interventions) Bill.

This legislation will provide the lawful basis to address issues regarding institutional burials. It will create the lawful authority to facilitate intervention at Tuam, where action is urgently required, as well as any other site that might show a similar disregard to common decency in terms of burial practices. I view it as imperative to afford these children the dignity in death so long denied to them. The Taoiseach and Government share this view.

Pre-legislative scrutiny of the proposed Bill is just concluding. I look forward to giving the report of the Committee my detailed consideration. In the meantime, I have instructed officials in my Department to continue the work on drafting the proposed bill.

33. Assisted Human Reproduction

Detail

One individual asked if this bill would be relevant for people born through assisted human reproduction, including donor egg/sperm and surrogacy, who are seeking information about their origins.

Response

This bill covers access to birth and early life information for individuals who were adopted, boarded out or illegally registered. Issues around donor assisted human reproduction are outside the scope of this bill.

Having said that, I appreciate the importance of learning from Ireland's historic adoption practices and ensuring that the rights of the child are protected in cases of assisted human reproduction, including the child's identity rights.

Responsibility for assisted human reproduction, and progression of the Assisted Human Reproduction Bill are a matter for the Minister for Health. This Department engages with the Department of Health to ensure that the rights of the child are reflected in this legislation.

34. Research Project by NUIG paying particular attention to Language, Terminology and Representation

Detail

One person stated that the exclusion of the words 'County Homes' from the title of the Research project was difficult to understand and that it should be included.

Response

I acknowledge the important point raised by this individual and will ask DCEDIY members of the Steering Committee for the project to raise the matter of the title at the next meeting.

The project is researching methods, concepts and principles for shared terminology and language in respect of former residents of the Mother and Baby Homes and related institutions. The related institutions relates to the County Homes also which were part of the terms of reference of the Commission. The project managers in NUIG who are leading this project are utilising the report from the Commission in their research and are aware that it includes County Homes. The project intends to have public consultations on the research and it is being managed by NUIG.

- ENDS -