



# Bills Digest

## Adoption (Information and Tracing) Bill 2016

**No. 100 of 2016**

20<sup>th</sup> March 2017

### Summary

The *Adoption (Information and Tracing) Bill 2016* seeks to provide for the collection, maintenance and preservation of adoption records (including informal and incorrectly registered adoptions) by the Adoption Authority of Ireland.

It also seeks to provide for the establishment and maintenance of a Register of Adoption Contact Enquiries by the Child and Family Agency. The Bill seeks to make available a tracing service to certain persons and their birth relatives, for the purpose of information sharing and to facilitate contact between such persons.

Finally, it seeks to amend the *Adoption Act 2010*, the *Child and Family Agency Act 2013* and to provide for related matters.

A **Bills Tracker Page** is available [here](#).

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## Glossary

Table 1 below provides a glossary of terms used throughout the Bill and in this Digest.

**Table 1: Glossary of Terms<sup>1</sup>.**

Term Used	Explanation
<b>Accredited Bodies (see also 'Registered Adoption Society' below)</b>	"A body of persons whose name is entered in the register of accredited bodies." <sup>2</sup>
<b>Adopted child</b>	An adopted person under the age of 18 years
<b>Adopted person</b>	A person over the age of 18 years adopted under an adoption order or born in the State but placed for adoption outside the state or a person who is the subject of incorrect registration (see below) or an informal 'adoption'.
<b>Adoption</b>	"Adoption in Ireland provides for the permanent transfer of parental rights and duties from the birth parents to the adoptive parents." An adopted child is considered to be the child of the adopters as if he/she were born into the family. <sup>3</sup>
<b>Adoption Order</b>	An adoption order is a legal order giving an adopted person full legal standing in their adoptive family. An adoption order secures in law the position of the child in the adoptive family. Adoption in Ireland is 'full', meaning the birth parents and the child no longer have any legal relationship or ties. Full adoption is sometimes called 'plenary' adoption.
<b>Birth relative (see also 'Relative' below)</b>	A relative of an adopted person's birth parents or a person who would but for the adoption of any other person be a relative of his or her birth parents, for example an adopted birth sibling.
<b>Incorrect registration</b>	It is an offence under the <i>Civil Registration Acts 2004 to 2015</i> to have the name of a person who is not a birth parent of the child entered in the register of births as the parent of a child. It is also an offence to omit the name of the birth mother of the child from the register of births as the mother of a child.  "A person who gives to a registrar particulars or information which he or she knows to be false or misleading is guilty of an offence". <sup>4</sup>
<b>Informal care arrangement (Informal 'adoption')</b>	An arrangement, other than a (private) foster care arrangement, where a child is placed in long term custody of a person who is not their birth parent/guardian or a person who is not their adoptive parent.
<b>Information Source</b>	Any person who has, or has attempted to make arrangements for the adoption of a child, at any time, may be identified by the Minister as an 'information source' (s.7).
<b>Registered Adoption Society</b>	A body of persons entered in the Adoption Societies Register in accordance with the definition in section 3 of the <i>Adoption Act 1952</i> . These were often religious orders which carried out adoptions in the past. These societies are now referred to as Accredited Bodies.
<b>Relative</b>	A parent, guardian, spouse, civil partner, grandparent, son, daughter, grandchild, brother, sister, uncle, or aunt of the adopted person.

<sup>1</sup> The Adoption Authority has also produced a detailed [glossary of terms](http://aai.gov.ie/images/Glossary-of-Terms-October-2016.pdf) relating to adoption which members may find useful. It is available at <http://aai.gov.ie/images/Glossary-of-Terms-October-2016.pdf>

<sup>2</sup> The same meaning is attributed to accredited bodies in the *Adoption (Information and Tracing) Bill* as attributed in s.3 (1) of the *Adoption Act 2010*

<sup>3</sup> Adoption Authority of Ireland <http://www.aai.gov.ie/index.php/what-we-do.html> Sourced 13 May 2016

<sup>4</sup> Section 69 (3) of the *Civil Registration Act 2004*

<b>Tracing</b> <sup>5</sup>	Tracing is the process whereby the information available on record about an adopted person or birth parent (or other persons as the case may be) is used to find the current location of that person, so that consent for the release of information to the applicant can be obtained and/or contact between parties can be arranged if requested and agreed by both parties. <sup>6</sup>
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## Executive Summary

The [Adoption \(Information and Tracing\) Bill 2016](#)<sup>7</sup> (“the Bill”) was published on the 25<sup>th</sup> November 2016 by Minister for Children and Youth Affairs, Dr. Katherine Zappone, T.D.<sup>8</sup>.

### *The purpose of the Legislation*

The Bill seeks to:

- Facilitate **access to adoption information** for relevant individuals, including the information needed to **apply for a birth certificate**;
- Provide for the establishment of a **Register of Adoption Contact Enquiries** (RACE). The register will enable applicants to **avail of a tracing service**, as well as **facilitating contact** between consenting individuals.

The Register of Adoption Contact Enquiries (RACE) will be developed and maintained by [Tusla: The Child and Family Agency](#).<sup>9</sup> The [Adoption Authority of Ireland](#)<sup>10</sup> has overall responsibility for all adoption records, including those relating to informal ‘adoptions’ and births which were incorrectly registered in the past.

The **Explanatory Memorandum** to the Bill is available [here](#)<sup>11</sup>.

The **Regulatory Impact Assessment (RIA)** of the Bill is available [here](#).<sup>12</sup>

A summary of the contents of the Bill is presented in the introduction to this Digest on page 6 (Table 2).

<sup>5</sup> As defined in the General Scheme of the Bill (Head 28, Pp. 160)

<sup>6</sup> *Adoption (Information and Tracing) Bill: General Scheme and Heads of the Bill*, Head 28, Pp.160

<sup>7</sup> <http://www.oireachtas.ie/documents/bills28/bills/2016/10016/b10016s.pdf>

<sup>8</sup> <http://www.dcy.gov.ie/viewdoc.asp?DocID=4052> Press release ‘Minister Zappone publishes Adoption (Information and Tracing) Bill 2016’, 25 November 2016

<sup>9</sup> <http://www.tusla.ie/services/alternative-care/adoption-services/tracing-service>

<sup>10</sup> [www.aai.gov.ie](http://www.aai.gov.ie)

<sup>11</sup> <http://www.oireachtas.ie/documents/bills28/bills/2016/10016/b10016s-memo.pdf>

<sup>12</sup> <https://www.dcy.gov.ie/documents/legislation/20161214ReglImpactAnalysisAdoptInfoandTracingBill.pdf>

### *The introduction of legal adoption in Ireland*

The [Adoption Act 1952](#) first formalised legal adoption in Ireland. The Adoption Authority (AAI) has advised that 44,364 adoption orders were made in Ireland between 1953 (after the *Adoption Act 1952* was enacted) and 2015. This does not take account of informal adoptions or wrongful registrations. The 1952 Act provided for an adoption system in which the birth parent(s) would remain anonymous since records identifying them were made inaccessible. The perceived need for secrecy was directly related to the societal stigma associated with having a child outside of marriage. Irish adoption legislation was influenced by the social attitudes of the time and was designed, in part, to reflect this.

The *Adoption (Information and Tracing) Bill 2016* seeks to amend the law to make such information available to as many adoptees as possible, operating on a “presumption in favour of disclosing information in so far as is legally and constitutionally possible”.<sup>13</sup>

### *National Adoption Contact Preference Register*

The National Adoption Contact Preference Register (NACPR) was launched in 2005. This Register is for adopted persons, birth parents and birth relatives of an adopted person to enter their details and indicate their preference regarding sharing of information and/or contact. The Register is currently ‘passive’, so unless there is a match, the person’s details remain static until the other party comes forward to register.

The Bill seeks to make the new Register of Adoption Contact Enquiries (RACE) proactive rather than passive. Registering personal details with the Agency will activate the information and tracing service needed to locate birth parent(s) or adopted child(ren) etc. The Register will be launched following wide scale promotion via an intense advertising campaign, which will run for six months.

### *The influence of social attitudes on adoption policy*

The policies governing adoptions in Ireland, (throughout the 1920s through to 1970s), reflected the values of the Irish state in which they were formed. Adoption policies also reflected the ethos of the Catholic Church, which was and remains today, the dominant religion of the population of Ireland and whose religious orders oversaw the majority of adoptions during this time. Conservative attitudes pertaining to sexuality, in particular female sexuality, to which both Church and State adhered, were enforced at the level of the nuclear

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<sup>13</sup> <https://www.dcy.gov.ie/documents/publications/20161125AdoptionInfoTracingBillFAQs.pdf> See Question 1: *What is the purpose of the legislation?*

family, and within Irish society more broadly. In the decades before the 1970s women without an independent source of income or the full support of their family would not have been in a position to raise their children alone as there was no social welfare support for unmarried mothers. This meant that the options for such women were limited. One such option was adoption.

### *Current Law*

The *Adoption Act 1952* remains the Principal Act relating to adoption in Ireland. The more recent *Adoption Act 2010* sought to improve standards in both domestic and intercountry adoption. There is no entitlement under current law for adopted people to have access to their birth certificate or records relating to their adoption.

### *Pre-Legislative Scrutiny*

The [Adoption \(Information and Tracing\) General Scheme and Heads of Bill](#)<sup>14</sup>, first published in July 2015, was subject to pre-legislative scrutiny (PLS) by the Oireachtas Joint Committee on Health and Children (as was). The Committee held three hearings during which time a wide range of stakeholders were represented. The Committee were generally supportive of the measures included in the General Scheme of the Bill. The members of the Committee made a number of recommendations relating to the Bill in their [PLS report](#)<sup>15</sup>, published in November 2015. The report is available [here](#)<sup>16</sup>. A number of the recommendations (including reducing the timeframe for advertising the introduction of the RACE register from 12 to six months) have been incorporated into the Bill.

### *Principal Provisions of the Bill*

- The transfer, maintenance, preservation and safeguarding of records by the Adoption Authority of Ireland (Part 2) (See page 33);
- The broad search powers of Authorised Officers in retrieving records from information sources and other relevant individuals (Part 2) (See page 34);
- The establishment of an ‘proactive’ Register of Adoption Contact Enquiries (Part 3) (See page 34);

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<sup>14</sup><http://www.dcy.gov.ie/documents/legislation/20150727AdoptionInfoandTracingHeadsofBill1.pdf>

<sup>15</sup>[https://www.oireachtas.ie/parliament/media/committees/healthandchildren/health2015/JCHC-Report-on-the-Pre-Legislative-Scrutiny-of-the-General-Scheme-and-Heads-of-the-Adoption-\(Information-and-Tracing\)-Bill.pdf](https://www.oireachtas.ie/parliament/media/committees/healthandchildren/health2015/JCHC-Report-on-the-Pre-Legislative-Scrutiny-of-the-General-Scheme-and-Heads-of-the-Adoption-(Information-and-Tracing)-Bill.pdf)

<sup>16</sup>[https://www.oireachtas.ie/parliament/media/committees/healthandchildren/health2015/JCHC-Report-on-the-Pre-Legislative-Scrutiny-of-the-General-Scheme-and-Heads-of-the-Adoption-\(Information-and-Tracing\)-Bill.pdf](https://www.oireachtas.ie/parliament/media/committees/healthandchildren/health2015/JCHC-Report-on-the-Pre-Legislative-Scrutiny-of-the-General-Scheme-and-Heads-of-the-Adoption-(Information-and-Tracing)-Bill.pdf)

- The establishment of a tracing service and facilitation of contact between parties by the Child and Family Agency (Part 4) (See page 35);
- Applying for information relating to various parties affected by adoption, including an adopted person, birth parents, adoptive parents, relatives, etc. (Part 5) (See page 37);
- Support and Guidance Services available to people affected by adoption (Part 6) (See page 39);
- Offences and Immunity under the proposed Act (Part 6) (See page 39).

### *Stakeholder Commentary*

The Bill has been broadly welcomed by relevant stakeholders, in particular, the provision to allow adopted persons to access information relating to birth certificates and adoption orders. The provision to include informal ‘adoptions’ and incorrect registration of births has also been welcomed. However, the requirement for adopted people to sign a ‘written undertaking’ agreeing not to make contact with birth relatives who do not wish to be contacted, has been condemned.

### *Performance Information Scrutiny*

Parliament’s oversight role extends to the scrutiny of how government is performing. One of the main functions of the Houses of the Oireachtas is to provide oversight of government activities and hold the government to account. Parliament can use performance scrutiny as a means to exercise this function. This section explores the issue of performance information and scrutiny in the context of the *Adoption (Information and Tracing) Bill 2016* and examines potential performance indicators that could be useful in scrutinising the legislation.

## Introduction

The [Adoption \(Information and Tracing\) Bill 2016](#)<sup>17</sup> was published on 25<sup>th</sup> November 2016. In a press release issued on the same day, Minister for Children and Youth Affairs, Ms. Katherine Zappone, T.D., (“the Minister”) stated:

“This Government fully appreciates that the desire to know one’s identity, or to re-establish contact, is fundamental and entirely reasonable. However, the balancing of rights of those affected by adoption cannot be discounted.”<sup>18</sup>

### The purpose of the Legislation

The Bill provides for the establishment of a proactive register, to be known as the Register of Adoption Contact Enquiries (RACE), which will be maintained by Tusla: The Child and Family Agency. The Bill provides for structured and regulated access to information and tracing services for those affected by adoption. It provides for access to adoption information (including the information needed to apply for a birth certificate or an adoption order) for adopted people, birth parents and others, and operates on the basis of a presumption in favour of disclosing information in so far as is legally and constitutionally possible. The Bill also provides for the safeguarding of all adoption records (including those relating to informal ‘adoptions’ and incorrectly registered births) in a suitable and secure centralised location. The Adoption Authority of Ireland (AAI) will have overall responsibility for all adoption records.<sup>19</sup>

### Role of [The Child and Family Agency](#)<sup>20</sup> (*‘the Agency’*)



Tusla is an independent, dedicated state agency, set up under the [Child and Family Agency Act 2013](#).<sup>21</sup> The Bill provides for the establishment of the Register of Adoption Contact Enquiries (RACE). The Agency will establish and maintain the register. Once the Bill has been commenced, the Agency will conduct a public awareness campaign for a period of six months. This grace period will allow birth parents to register a preference for ‘no contact at

<sup>17</sup> <http://www.oireachtas.ie/documents/bills28/bills/2016/10016/b10016s.pdf>

<sup>18</sup> <http://www.dcy.gov.ie/viewdoc.asp?DocID=4052> Press release ‘Minister Zappone publishes Adoption (Information and Tracing) Bill 2016’, 25 November 2016

<sup>19</sup> <http://dcya.gov.ie/documents/legislation/20150727AdoptionInfoTracingBillFAQs.pdf>

<sup>20</sup> <http://www.tusla.ie/services/alternative-care/adoption-services/tracing-service>

<sup>21</sup> <http://www.irishstatutebook.ie/eli/2013/act/40/enacted/en/html>

present' (if they wish), before the adopted person is eligible to request information needed to apply for a birth certificate (they will have a statutory entitlement to the information once the six months has passed). The Agency will facilitate contact between parties and will offer support and guidance to persons who request contact and/or the sharing of information.

### Role of the [Adoption Authority of Ireland](#)<sup>22</sup> ('the Authority')



## ÚDARÁS UCHTÁLA na hÉIREANN THE ADOPTION AUTHORITY of IRELAND

The Adoption Authority of Ireland (AAI) is an independent body set up under the [Adoption Act 2010](#).<sup>23</sup> All applications for adoption orders are made to the Adoption Authority of Ireland. The Board of the Adoption Authority may grant or refuse applications for adoption orders in relation to Irish adoptions. Under the provisions of the Bill the Authority will be responsible for collecting, restoring, preserving and safekeeping of adoption records (including 'incorrectly' registered adoptions and informal 'adoptions'). Table 2 below provides a summary of the Bill.

**Table 2: Summary of the Bill**

Parts	Sections	Explanation
Part 1: Preliminary and General	1-6.	<ol style="list-style-type: none"> <li>1. Short title and commencement.</li> <li>2. Interpretation (<i>see also Glossary on page 2 of this Digest</i>)</li> <li>3. Regulations to be made by the Minister.</li> <li>4. Expenses to be sanctioned by the Minister for Public Expenditure and Reform and paid by the Oireachtas.</li> <li>5. Allocation of monies to the Agency (s.5 (1)) and the Authority (s.5 (2)) for any operation costs arising from obligations under the Act.</li> <li>6. Section 6. (1) states that a relevant person (i.e. a person affected by adoption) may nominate in writing another person (aged 18 years or over) to act on their behalf in relation to their application for information. The Agency or Authority shall satisfy themselves as to the identity of any person authorised to act on a relevant person's behalf (s.6 (2)).</li> </ol>

<sup>22</sup> [www.aai.gov.ie](http://www.aai.gov.ie)

<sup>23</sup> <http://www.irishstatutebook.ie/eli/2010/act/21/enacted/en/html>

<p><b>Part 2:</b> <b>Safeguarding relevant records</b></p>	<p>7-13.</p>	<p>7. Minister may determine as an ‘information source’ any person who the Minister “<i>reasonably believes has, at any time, made or attempted to make arrangements for the adoption of a child.</i>”<sup>24</sup></p> <p>8. &amp; 9. ‘Information sources’ (or other persons identified by the Authority) shall provide the Authority with a statement (including nature, current location and condition) of the relevant records in its possession, within 3 months of these sections being commenced (s.8 (1)).</p> <p>9. Section 9 (1) states that they may also do so even if they have not been issued with a direction from the Authority.</p> <p>10. Section 10 (1) states that the Authority shall obtain and retain relevant records in respect of each person who is the subject of an adoption order (including those who were the subject of informal ‘adoptions’ and incorrect registrations).</p> <p>11. The Authority is responsible for ensuring that an index of adoption records is prepared and a searchable electronic database of the records is created and maintained (s.11 (2)). The Minister may issue guidelines in relation to this particular function (s.11 (3)).</p> <p>12. The following persons only shall have access to the index, the database and any relevant records held by the Authority: a) employees and other persons authorised by AAI; b) employees and other persons authorised by the Agency; c) successful applicants who applied to the Agency for information.</p> <p>13. This section deals with the search powers of Authorised Officers. (See the principle provisions section on page 33 of this Digest).</p>
<p><b>Part 3:</b> <b>Register of Adoption Contact Enquiries</b></p>	<p>14.</p>	<p>14. The Agency shall establish and maintain a register to be known as the Register of Adoption Contact Enquiries. (See principle provisions section on Page 33 of this Digest).</p>
<p><b>Part 4:</b> <b>Tracing</b></p>	<p>15-21.</p>	<p>15. Interpretation (<i>Part 4</i>)</p> <p>16. The Agency shall take all reasonable steps to locate a person in order to obtain information as requested by a person (a ‘requester’) or to facilitate contact with that person, unless the person has made a statement (under section 14(6)(c)(iii)) that they do not wish to be contacted.</p> <p>17. The Agency may request information from a person “<i>only where the Agency reasonably requires the information</i>”<sup>25</sup> to perform the functions of its role or to provide the information to an applicant. The Agency shall not disclose this information in any circumstances unless provided for by this Act.</p>

<sup>24</sup> Adoption (Information and Tracing) Bill 2016, s.7, Pp. 11

<sup>25</sup> Adoption (Information and Tracing) Bill 2016, s.17, Pp. 18

		<p>18. Relevant bodies which propose to share information shall enter into a data exchange agreement which shall specify the procedures to be followed by each party with respect to the sharing of personal data. The <i>Data Protection Acts 1988 and 2003</i> shall apply to information shared under this section.</p> <p>19. The Minister may issue guidelines to the Agency in order to provide practical guidance and procedures (for locating a person) in relation to the performance of its functions under Part 4.</p> <p>20. A 'requester' may request that the Agency facilitate contact between them and a 'specified person'. The Agency must take all reasonable steps to locate the person, and, if the person is willing to meet the requester, to take action to facilitate such contact.</p> <p>21. The Agency may authorise an accredited body to perform the functions of the tracing service.</p>
<p><b>Part 5: Provision of Information</b></p>	<p>22-44.</p>	<p>22. Interpretation (<i>Part 5</i>)</p> <p>23. An adopted person aged 18 years or over may apply to the Agency for items and information.</p> <p>24. Where an applicant applies for information relating to their adoption the Agency shall provide the applicant with a statement containing this information but which does not contain identifying information on the birth mother or father.</p> <p>25. Where an applicant applies for birth certificate information or an adoption order and a) the birth mother is deceased; b) there is no entry on the register in relation to the birth mother, and; c) the applicant agrees to sign an 'undertaking', the Agency will provide this information.</p> <p>26. Where an application is made by an adopted person for a birth certificate or adoption order and there is an entry in the register in relation to the birth mother, the Agency shall consult with the birth mother on the applicant's behalf. (See principle provisions on page 33 of this Digest).</p> <p>27. Where an adopted person applies for information on their birth father and a) the birth father is deceased; b) there is no entry on the register in relation to the birth father, and; c) the applicant agrees to sign an 'undertaking', the Agency will provide this information.</p> <p>28. Where an application is made for the forename and surname of an adopted person's birth father and there is an entry in the register in relation to the birth father, the Agency shall consult with the birth father on the applicant's behalf. (See principle provisions on page 33 of this Digest).</p>

		<p>29. Application under Section 23(2)</p> <p>30. Adopted person may apply for forename and surname of relevant guardian.</p> <p>31. Consultation with relevant guardian</p> <p>32. A birth parent of an adopted person (aged 18 years or over) may apply for information.</p> <p>33. Birth parent of adopted child (under 18 years) may apply for information and items (such as letters, photos or other mementos, information on the child's health and general well being. The adoptive parent is not obliged to provide this information,</p> <p>34. S.34 (b) states that the birth parent of a person who was the subject of an incorrect registration or informal 'adoption' arrangement may apply to the Agency for information.</p> <p>35. Adoptive parent of adopted child (under 18 years) may apply for information and items (such as letters, photos or other mementos, information on the child's early life. The birth parent is not obliged to provide this information,</p> <p>36. Adoptive parent of adopted child may apply for certain information which relates to his/her adopted child including early life and medical information, birth parent information etc.</p> <p>37. Adoptive parents of an adopted child may apply to the Agency for birth certificate information or an adoption order that relates to his/her adopted child.</p> <p>38. An adoptive parent of an adopted child may apply to the Agency for the forename and surname of their adopted child's birth father.</p> <p>39. A relative of an adopted person or birth parent may apply to the agency for information.</p> <p>40. Provision of information under Part 5: Sets out the types of statement and information which may be made available to various applicants under Part 5. In relation to the types of medical information which may be made available, the Agency shall issue guidelines and shall consult with persons with expertise in the area of hereditary medical conditions, as appropriate.</p> <p>41. Undertaking not to contact a person: S.41 (2) states that an 'undertaking' shall be in writing and in a form specified by the Minister. S.41 (1) states that the undertaking given to the Agency by the applicant concerned should state that the applicant will <u>not</u> contact, or attempt or contact a birth parent or relevant guardian, and will <u>not</u> make arrangements with any other person to contact, or attempt to contact a birth parent or relevant guardian on the adopted person's behalf.</p> <p>42. S. 42 deals with consent under Part 5. S.42 (2) states that the Agency shall ensure that</p>
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		<p>the person concerned is made aware of <u>all</u> of the information and <u>each</u> document that the Agency proposes to provide to the applicant concerned. S. 42 (3) and (4) states that the person may, in writing, consent to the release of all, some or none of the information or documentation concerned, while s.42 (5) states that the person may withdraw their consent at any time.</p> <p>43. Where the Agency, despite having made reasonable efforts, has <u>not</u> succeeded in locating a person for the purposes of Part 5, it may apply to the Minister to provide authorisation (s.43 (1)).</p> <p>44. The Agency may refer any question of law arising from an application to the High Court for determination. S.44 (2) states that any matter referred to the High Court may be heard in private.</p>
<p><b>Part 6:</b> <b>Miscellaneous</b></p>	<p>45-52.</p>	<p>45. The Agency shall provide support and guidance to any person who applies to have an entry made in the register, to any person who requests the facilitation of contact between him or her and a specified person, to any person who makes an application for information. S.45 (2) states that the Agency shall publish guidelines (with the Minister's approval), in relation to the provision of support and guidance to persons referred to in this section.</p> <p>46. An information source or any other person who fails to comply with a direction of the Authority or who tampers with or destroys a relevant record shall be guilty of an offence.</p> <p>47. Amendment of Section 14(a) of <i>Adoption Act 2010</i></p> <p>48. Amendment of Section 17(2) of <i>Adoption Act 2010</i></p> <p>49. Amendment of Section 37 of <i>Adoption Act 2010</i></p> <p>50. Amendment of Section 96(1) of <i>Adoption Act 2010</i></p> <p>51. Amendment of Section 8 of <i>Child and Family Agency Act 2013</i></p> <p>52. The State, the board members, former board members, employees and former employees of the Agency or the Authority “<i>shall not be liable in damages</i>” and shall therefore have immunity in respect of any act done or omitted to be done in the performance of the functions of their role, “<i>unless the act or omission concerned was done in bad faith.</i>”<sup>26</sup></p>

<sup>26</sup> *Adoption (Information and Tracing) Bill 2016*, s.52, Pp. 42

## Background & social context to the Bill

### **Background to the Bill**

The [Adoption Act 1952](#) first formalised legal adoption in Ireland. ‘Adoptions’ before the commencement of the Act were informal and were not legally recognised. This legislation provided for the termination of the legal relationship between an adopted child and his/her natural parents. In essence “the adopted child would become the child of the adoptive parents as if born to them in wedlock and the natural parent would relinquish all rights and duties towards the child.”<sup>27</sup>

The official adoption body, the Adoption Board (replaced by the [Adoption Authority of Ireland](#)), first flagged the issue of post-adoption contact and information in 1983, when it called for a legislative framework to structure the process.<sup>28,29</sup> The Authority reported that in recent years there has been “an upsurge in the number of information and tracing queries countrywide.”<sup>30</sup>

The Authority has advised that 44,364 adoption orders were made in Ireland between 1953 (after the *Adoption Act 1952* was enacted) and 2015. This does not take account of informal adoptions or wrongful registrations which took place during the same period. Nor does it take account of *de facto* adoptions which took place in Ireland before the legislation was introduced in 1952.

The 1952 Act provided for an adoption system in which the birth parent(s) would remain anonymous since records identifying them were made inaccessible. The Law Society Gazette (referring to a quote by Barron J in relation to secrecy) recalled that secrecy “has always been a paramount consideration in adoption law.”<sup>31</sup> However, the Society argues that:

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<sup>27</sup> Department of Health and Children (2005) *Adoption legislation: 2003 consultation and proposals for change*. Department of Health and Children, Dublin. p.87

<sup>28</sup> Mr Kiernan Gildea, Acting CEO, Adoption Authority of Ireland, appearing before the Joint Oireachtas Committee on Health and Children, 26 June 2014. See [Oireachtas debate](#).

<sup>29</sup> The Review Committee of Adoption Services was established in 1983 and submitted a Report in 1984. The majority of the committee were in favour of informing birth mothers in future adoptions that their child would have full access to birth records when they turned 18 years of age. The adoptee would have the right to access their original birth certificate, after counselling. This was opposed by a minority on the Committee. Recommendations of the Review Committee were never implemented. See Farrelly Conway, Eileen (1993) ‘*Search and Reunion in the Adoption Triangle*’, Department of Social Studies, Trinity College, Pp.10-11

<sup>30</sup> <http://www.aai.gov.ie/tracing/contact-preference-register.html>

“It must be remembered that the tendency towards secrecy in the adoption process cannot be attributed to any specific statutory provision, but rather to established practice among adoption agencies and other professionals.”<sup>31</sup>

The perceived need for secrecy was directly related to the societal stigma associated with having a child outside of marriage. Irish adoption legislation was influenced by the social mores of the time and was designed, in part, to reflect this (see ‘*Social context to the Bill*’ below). It has since proved problematic for modern legislators seeking to meet new standards of openness. Professor William Duncan<sup>32</sup> has described the difficulties as follows:

... [a] challenge facing adoption law in Ireland is how to respond to the greater openness in the adoption process. The stigma which once attached to birth outside marriage led to a secretive and sanitised adoption system whose hallmarks were anonymity and confidentiality for the natural mother along with a “clean break” – that is a complete severing of the ties between the natural mother and her child. These principles were designed to allow the natural mother to start her life afresh, having put aside an unfortunate episode in her life with no fear that the cupboard doors would be opened and the skeleton later revealed.<sup>33</sup>

The 1952 legislation provided for the creation of an Adoption Index which allowed for a traceable connection between the birth and adoption records held by the General Registrar Office (GRO). However, information on this index may not be given to anyone without the consent of the Adoption Authority. It was considered at that time that a complete break was desirable and could be best achieved in this way.

In the period between January 2014 and September 2016<sup>34</sup> 170 applications for Birth Certificates were made, of which 67 were released to applicants. This equates to 39.4% of the total. Twenty of the applications were refused; or almost 12% of the total. There is no further information available<sup>35</sup> on the remaining 83 applications made during this period. These may not have been processed, as yet. See Table 3 below:

**Table 3: Number of Applications for Release of Birth Certificates**

Applications for Release of Birth Certificates			
Year	Applications	Releases	Refused
2014	50	23	2
2015	68	30	5
2016 (to September only)	52	14	13

<sup>31</sup> Law Society Gazette (2010) *Adoption law: the case for reform*, June 2000; p. 17

<sup>32</sup> Professor of law and jurisprudence, at Trinity College Dublin (TCD)

<sup>33</sup> Duncan, William (1992) Foreword to O’Halloran, Kerry (2010) *Adoption Law and Practice*, Tottel Publishing, Dublin. P. ix.

<sup>34</sup> Latest dates for which data is available.

<sup>35</sup> From the AAI website statistics page <http://www.aai.gov.ie/statistics.html>

Source: Adapted by L&RS from statistics available on AAI website  
<http://www.aai.gov.ie/images/General-Statistics-2014-and-2015.pdf>

The Bill seeks to amend the law to make such information available to as many adoptees as possible, operating on a “presumption in favour of disclosing information in so far as is legally and constitutionally possible”.<sup>36</sup>

[The Adoption Act 2010](#) established the Adoption Authority of Ireland (replacing the Adoption Board). It has operated the National Adoption Contact Preference Register (NACPR - which was launched in 2005) since its establishment in 2010. This Register allows adopted persons, birth parents and birth relatives of an adopted person to enter their details on the Register and indicate their preference regarding sharing of information and/or contact. The Register is currently ‘passive’, in other words, unless there is a match, the person’s details remain static on the Register until the other party comes forward to register.

Within the context of legislative provision for a ‘clean break’ and administrative practices which placed a high value on secrecy; some parties to adoption have sought to gain information and, in some cases to trace (i.e. search for and make contact with) other parties to the adoption.

Within the first year of its establishment, the NACPR received 5,500 applications, just over 4,800 of these were entered onto the NACPR database and these generated 160 matches. By the end of June 2016 this had risen to 12,672 entries (8,756 by adopted persons and 3,916 birth relatives).<sup>37</sup>

Between January 2014 and September 2016, 1,771 applications were made to the NACPR. Some of the applicants may have expressed a preference for no contact, although the AAI do not provide figures on this. If a preference for no contact is declared, no match will be initiated. However, we can assume that the majority of people applying to the Register wish to make contact with a birth relative. Of these, fewer than 100 matches are made through the NACPR each year. While the number of applications received varies each year, this equates to between 12-16% of applications made during the last two and a half years.

See Table 4 overleaf:

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<sup>36</sup> <https://www.dcy.gov.ie/documents/publications/20161125AdoptionInfoTracingBillFAQs.pdf> See [Question 1: What is the purpose of the legislation?](#)

<sup>37</sup> Department of Children and Youth Affairs Regulatory Impact Assessment for the Adoption (Information and Tracing) Bill 2016  
<https://www.dcy.gov.ie/documents/legislation/20161214RegImpactAnalysisAdoptInfoandTracingBill.pdf>

**Table 4: Number of Applications to NACPR & Number of Matches by Year**

National Adoption Contact Preference Register (NACPR)		
Year	Applications	Matches
2014	787	95
2015	572	92
2016 (to September only)	412	82

Source: Adapted by L&RS from statistics available on AAI website:  
<http://www.aai.gov.ie/images/General-Statistics-2014-and-2015.pdf>

The Bill seeks to make the new Register of Adoption Contact Enquiries (RACE) proactive rather than passive. Registering personal details with the Agency will activate the information and tracing service needed to locate birth parent(s) or adopted child(ren) etc. The Register will be launched following its promotion via an intense advertising campaign, which will run for six months.

#### **Box 1: Summary of views on adoption legislation – 2003 consultation and proposals for change<sup>38</sup>**

A consultation in 2003 by the Department of Health and Children concerning post-adoption information and tracing (amongst other issues) found that people affected by adoption held diverse views about access to information and the protection of privacy.

Some adoptive parents were fearful and angry at suggestions that the rules would be changed retrospectively; undermining the guarantees they received when adopting. Some adoptive parents had not told their children they were adopted. One natural mother expressed the same opinion about not wanting to “*hear any more about that*”, and that the adoption should remain “*private and confidential*.” Some natural parents stated that they would not and could not deal with confronting their past.

Adopted people affected described a wish to know more about themselves and the other parties to the adoption. Some adopted people “wrote of the tremendous loss they experience in not knowing their identity”. One adopted woman said that being adopted made her feel “disconnected and rootless”. Others expressed the view that information held on their adoption files relates to them and “must be theirs to see in its entirety”.

### **Social Context of the Bill**

As stated above, the policies governing adoptions in Ireland, (specifically after 1952 but in general throughout the period of the 1920s to 1970s), reflected the values of the Irish state in which they were formed. Adoption policies also reflected the ethos of the Catholic Church, which was and remains today, the dominant religion of the population of Ireland and whose religious orders oversaw the majority of adoptions during this time. Conservative attitudes

<sup>38</sup> *Adoption Legislation: 2003 consultation and proposals for change*, (2005), Department of Health and Children.

pertaining to sexuality, in particular female sexuality, which both Church and State adhered to were also enforced at the level of the nuclear family, and within Irish society more broadly.

### *The influence of Church and State*

Milotte (2012) argues that in the years after the Second World War “Ireland was a solidly Catholic country. Church and State were as one in their determination to enforce a deeply traditional moral code.... Artificial birth control was outlawed and chastity was demanded of everyone who wasn’t married.”<sup>39</sup>

Sex outside of marriage and any resultant pregnancy, were viewed as ‘immoral’. Over 100,000 Irish children were born outside marriage between 1920 and the mid-1970s.<sup>40</sup> These children were deemed ‘illegitimate’ and were often adopted in great secrecy, either informally in long term fostering arrangements (known as ‘boarding out’) or legally, following the commencement of the *Adoption Act 1952*.

### *Female Sexuality*

The language which was frequently used to describe women, who found themselves pregnant outside of marriage, is a telling indicator of broader social attitudes. Such women were often demonised for having transgressed sexual norms, while simultaneously being infantilised, and described as ‘childlike’ or in need of protection. This is evident in numerous discourses on the subject which arose during this period. For example:

Fr. Cecil Barret, Head of the Catholic Social Welfare Bureau, referred to single mothers as ‘fallen women’ and ‘grave sinners’ with ‘moral problems’<sup>41</sup>.

“The mother was seen as a wicked sinner and her child a tainted outcast.”

Unmarried women who became pregnant for the first time were sometimes referred to as ‘first offenders’. This was in order to distinguish them from ‘*recidivist*’ lone mothers, who may have given birth to a number of children outside of marriage. The recidivists were known as ‘hardened sinners’.<sup>42</sup> The language used would not have seemed out of place in describing convicted criminals. The ‘offenders’ crimes were to “transgress society’s sexual norms as

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<sup>39</sup> Milotte, Mike (2012), *Banished Babies: The Secret History of Ireland’s Baby Export Business*, New Island, Dublin, Pp.9-10

<sup>40</sup> Milotte, Mike (2012), *Banished Babies: The Secret History of Ireland’s Baby Export Business*, New Island, Dublin, Pp.11

<sup>41</sup> Milotte, Mike (2012), *Banished Babies: The Secret History of Ireland’s Baby Export Business*, New Island, Dublin.

<sup>42</sup> O’Sullivan, E., and I. O’Donnell (eds.), (2012) *Coercive confinement in Ireland: Patients, Prisoners and Penitents*, Manchester University Press, UK, Pp. 18.

defined by Church and State”, and they were the subject of many discussions during this period. How such girls should be ‘punished’ or ‘saved’ preoccupied contributors to religious magazines, such as the Irish Ecclesiastical Record, among others.<sup>43</sup>

However, other commentators involved in their care and detention (e.g. in some County Homes or institutions run by religious orders), described the women variously, as ‘*children*’, as ‘*unfortunates*’, or as “victims of folly rather than of depravity, [who should] be rescued from further calamity”. Such ‘*poor creatures*’ were in need of protection and spiritual guidance. A quote from a Matron at Bessboro House Mother and Baby Home<sup>44</sup> below perfectly captures the paternalistic attitudes of the time. “A number of the girls are very weak willed and have to be maintained in the home for a long period to safeguard them against a second lapse.”

In recent years representatives of the Catholic Church in Ireland have expressed their regret at how women who gave birth to babies outside of marriage were viewed and treated in the past. In June 2014, when the Commission of Investigation into Mother and Baby Homes was launched and again in November 2016, the leader of the Catholic Church in Ireland, the Archbishop of Armagh, Eamon Martin, issued an apology for the hurt caused by the church to mothers and babies and for the church’s role in ‘forced adoptions’.

[S]adly, we are being reminded of a time when unmarried mothers were often judged, stigmatised and rejected by society, including the church. This culture of isolation and social ostracising was harsh and unforgiving...[and we apologise] for hurt caused by the church as part of this system. [We also] support the government’s intention to publish legislation on ‘tracing’ rights for adopted children and their mothers with due regard to the rights of all involved.<sup>45</sup>

### *The influence of Family and Society*

Recurrent language used throughout the discourse which emerged between the 1920’s and 1970’s, centred on the ‘shame’ and fear of public ‘humiliation’ expressed by parents and families of the young girls who fell pregnant outside of marriage.

The reactions of parents and family (whether real or anticipated) had a major influence on how many young women dealt with their pregnancies. Some did not disclose their situation, keeping it secret even from their parents, due to the societal stigma attached.

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<sup>43</sup> ‘*How to deal with the Unmarried Mother*’, Saggart, (1922) in O’Sullivan, E., and I. O’Donnell (eds.), (2012) *Coercive confinement in Ireland: Patients, Prisoners and Penitents*, Manchester University Press, UK, Pp. 45.

<sup>44</sup> O’Sullivan, E., and I. O’Donnell (eds.), (2012) *Coercive confinement in Ireland: Patients, Prisoners and Penitents*, Manchester University Press, UK, Pp. 19.

<sup>45</sup> ‘*Catholic leader apologises for Church’s role in forced adoptions*’, Irish Times article, 7<sup>th</sup> November 2016 <http://www.irishtimes.com/news/social-affairs/religion-and-beliefs/catholic-leader-apologises-for-church-s-role-in-forced-adoptions-1.2857831>

Journalist Michael Vinney, writing in the 1960s, touched on this aspect of the role which family and Irish society played in influencing young women to give their children up for adoption:

“Perhaps the one really distressing aspect ... is that Irish society should have made such conspiracy necessary. Some Irish people thought it ‘natural’ that a girl should want to ‘hide her shame’, even from her own parents. But what kind of family love is this which cannot stand the ultimate test of loyalty and forgiveness, and seems so ruthlessly conditioned by what the neighbours will say?”<sup>46</sup>

Some women who revealed their pregnancies to their parents received a hostile response.

Many young women who got pregnant were thrown out of the family home and ... disowned by their parents, so great was the shame. If they were allowed to return it was only after they had got rid of their babies, the visible proof of their mortal sin.<sup>47</sup>

As with Milotte (2012) above, Vinney (1966), arguing many decades before, suggests that a young woman’s decision to have her child adopted was not always straightforward. Had the circumstances been different, some birth mothers may have preferred to keep their babies. However, a combination of pressure from their families or birth fathers to give up a child, combined with a lack of financial resources, a fear of ostracism by the community or feelings of guilt for bringing shame on the family, may have prevented them from doing so.

It is all too often a forced solution. There is often no reason, whatever why the mother should not take the baby home except the fear of ‘what people will say’....The parents who force their daughter to part with such a child to a foster home or institution have a shame of their own to hide.<sup>48</sup>

### *Adoption as a ‘choice’*

Before the establishment of the National Adoption Contact Preference Register (NACPR) in 2005, birth mothers who relinquished their rights to a child through adoption did not have the option of stating their preference for contact with the adopted child. Any woman giving a child up for adoption was required to give up access to the child and accept that they themselves must become “anonymous and untraceable.”

At the time, a ‘clean break’ was thought best for all involved so birth mothers (and fathers) were told to forget about the child and move on with their lives.

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<sup>46</sup> Vinney, M. (1966) ‘No birth right: A study of the Irish unmarried mother and her child’, in O’Sullivan, E., and I. O’Donnell (eds.), (2012) *Coercive confinement in Ireland: Patients, Prisoners and Penitents*, Manchester University Press, UK, Pp. 101.

<sup>47</sup> Milotte, M. (2012) *Banished Babies: The Secret History of Ireland’s Baby Export Business*, New Island Press, Dublin, Pp. 12

<sup>48</sup> Vinney, M. (1966) ‘No birth right: A study of the Irish unmarried mother and her child’, in O’Sullivan, E., and I. O’Donnell (eds.), (2012) *Coercive confinement in Ireland: Patients, Prisoners and Penitents*, Manchester University Press, UK, Pp. 102.

“Denial, as the basis of the traditional adoption model, resulted in an unresolved sense of loss for many women. Their profound loss can have long term deleterious results. A birth mother who placed her baby for adoption 20 or 30 years ago may still be experiencing disturbing feelings of anguish and guilt.”<sup>49</sup>

### *State Assistance*

In the decades before the 1970s women without an independent source of income or the full support of their family would not have been in a position to raise their children alone as there was no social welfare support for unmarried mothers. This meant that the options for such women were limited. One such option was adoption.

“Before the early 1970’s, when an allowance for unmarried mothers was finally introduced, the Irish State offered no help.”<sup>50</sup>

Some women, who became pregnant during this period, made definitive decisions to place their babies for adoption; believing that this option would provide the child with the best possible start in life. Some of these women may therefore be uncomfortable with the potential loss of their anonymity, (especially in light of assurances given to them when they placed a child for adoption). They may also be resistant to the prospect of unwanted contact from adult adoptees. Unfortunately, many other unmarried women wanted to keep their babies, while others hoped for an alternative to the secrecy of adoption. However, prevailing attitudes and the resultant policies conspired to prevent them from having a level of involvement in their children’s lives. Many decades later, the legacy of this is still felt by numerous birth parents, adopted children and others affected by adoption.

In the intervening years attitudes to births outside of marriage have changed immeasurably, as has the importance placed on both institutional transparency and the right of an individual to access personal information.

### **Additional Library and Research Service Resources:**

For additional background and policy context on adoption in Ireland please refer to the L&RS Bill’s Digest for the [Adoption \(Amendment\) Bill 2016](#)<sup>51</sup>.

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<sup>49</sup> Farrelly Conway, E.,(1993) *Search and Reunion in the Adoption Triangle*. Trinity College, Dublin, Pp. 33

<sup>50</sup> Milotte, M. (2012) *Banished Babies: The Secret History of Ireland’s Baby Export Business*, New Island Press, Dublin, Pp. 12

<sup>51</sup> <http://www.oireachtas.ie/documents/bills28/bills/2016/2316/b2316d.pdf>

## Current Law

The *Adoption Act 1952* remains the Principal Act relating to adoption in Ireland. The purpose of the more recent *Adoption Act* introduced in 2010 was to improve standards in both domestic and intercountry adoption. Under current law there is no comprehensive statutory right to adoption information. There is no entitlement for adopted people to have access to their birth certificate or records relating to their adoption.

“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.”<sup>52</sup>

Some Irish mothers want the birth and adoption of their child kept secret. In these situations in the past, confidentiality was considered beneficial, as it allowed women, who were often in vulnerable situations, to seek help that they might otherwise have feared to ask for. Furthermore, there no right to information under Irish law for natural parents, adoptive parents or other relatives such as siblings.

The Irish approach is in contrast with several other common law jurisdictions which are, or have become, more open in relation to the provision of information on the origins of adopted people. Legal academic Ursula Kilkelly<sup>53</sup> has highlighted that:

“In other jurisdictions and under international law, children’s’ need to know the full details of their origins has been matched by a recognition of identity as a legal right, with the result that Irish law lags behind developments elsewhere in this area.”<sup>54</sup>

Comparing the effect of adoption orders in Ireland with UK jurisdictions, another legal academic Kerry O’Halloran states:

“[Nowhere] in these islands, is there anywhere where less legislative compromise is made to allow an adopted child to maintain relationships already established with members of his or her family of origin, or to subsequently re-discover them”.<sup>55</sup>

O’Halloran attributes this difference to adoption being much more a matter of private rather than public law in this jurisdiction, “largely due to the effect of the Constitution.”

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<sup>52</sup> General Scheme and heads of Bill, Pp.53

<sup>53</sup> Senior Lecturer in Law, UCC.

<sup>54</sup> Kilkelly, Ursula (2008) *Children’s Rights in Ireland*, Tottel Publishing, Dublin. p. 384

<sup>55</sup> O’Halloran, Kerry (2010) *Adoption Law and Practice*, Tottel Publishing, Dublin. p.147.

Shatter has argued the case for reform stating:

“Despite the many changes [to adoption law] effected since 1952 [when the Adoption Act was passed], the underlying philosophy of some aspects of our adoption code still reflects the thinking of the 1950s and fails to embrace today’s understanding of the rights of the child, of adopted persons, and of birth parents, both mothers and fathers.”<sup>56</sup>

**Case Law: I.O’T. –v- B. Case<sup>57</sup>**

The I.O’T. -v- B. case addressed the balancing of rights of an adopted person to know their identity with the right of their natural mother to privacy and anonymity (see below).

*The right to privacy and the right to know one’s identity*

**Box 2: I.O’T. v. B. and the Rotunda Girls’ Aid Society; and**

**M.H. v. Rev. G.D. and the Rotunda Girls’ Aid Society<sup>58</sup>**

In this case the Supreme Court found that a child enjoys an unenumerated constitutional right to be told the identity of his/her birth mother. However, this right is not absolute, and must be balanced against the natural mother’s right to privacy and anonymity. In both these cases, the applicants (who were **informally adopted**) claimed that they had a constitutional right to access to information relating to the circumstances of their respective births. The respondent adoption society contested this, claiming that the records in question were confidential.

The Supreme Court agreed that the right to know the identity of one’s birth mother is a constitutional right guaranteed by Article 40.3 of the Constitution. However, this right is restricted by the Adoption Acts, and such restriction may be valid, having regard to the need for the State to respect and vindicate the (sometimes) conflicting rights of the birth mother (i.e. the rights to privacy and confidentiality in respect of the adoption). The task of balancing these rights falls to the courts, which in doing so must seek to:

“...harmonise such rights having regard to the provisions of the Constitution, and in the event of failure to so harmonise, to determine which right is the superior, having regard to all the circumstances of the case”.<sup>59</sup>

The Supreme Court stated that neither set of rights was absolute. In making its decision, the Supreme Court pointed to certain criteria that courts should take into account in deciding similar cases:

- i. the circumstances surrounding the birth mother’s loss of custody of the child;
- ii. the current status and circumstances of the birth mother and the potential

<sup>56</sup> Shatter, A. (1997) *Shatters’ Family Law*, Fourth Ed., Tottel Publishing, Dublin. p. 516.

<sup>57</sup> [1998] 2 I.R.

<sup>58</sup> [1998] 2 I.R.

<sup>59</sup> Kilkelly, U (2008) *Children’s Rights in Ireland*, Tottel, Dublin. Pp. 385

- effect upon her of the disclosure of her identity;
- iii. the birth mother’s own wishes and attitude regarding the disclosure, and the reasons behind these wishes and the aforementioned attitude;
- iv. the current age of the birth mother and child respectively;
- v. the attitude of the birth child, including the reasons why he or she wishes to seek disclosure of his or her natural mother’s identity;
- vi. the present circumstances of the natural child; and,
- vii. the opinion of the adoptive parents or other interested persons.

Kilkelly (2008) stated that, as the *I.O’T.* case concerned informal adoption (i.e. a case whereby the familial relationship was never formally or legally severed); “the court suggested that an even stricter test would apply in formal adoption given that no familial relationship survives between a legally adopted person and his or her birth mother.”

The author continues:

“Irish law is clear, therefore, that adopted persons have no right to know the details of their origins, and any claim to this effect can be trumped by the opposition of their birth parents.”<sup>60</sup>

However, during hearings held with stakeholders, as part of the Joint Oireachtas Committee’s pre-legislative scrutiny (PLS) of the Heads of the Bill, a number of legal academics expressed a different view.

Dr. Fergus Ryan<sup>61</sup> interpreted the Supreme Court ruling in relation to the *I.O’T. vs. B.* case, 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.”<sup>62</sup>

Dr. Conor O’Mahony<sup>63</sup> stated that:

“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.”

Dr. Geoffrey Shannon, Chairperson of the Adoption Authority of Ireland (AAI), also offered his views on the judgement in the Supreme Court case, in which he stated that since the ruling related to informal adoptions only it should have limited bearing on legal adoptions.

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<sup>60</sup> Kilkelly, U (2008) as before; Pp. 386.

<sup>61</sup> National University of Ireland (NUI), Maynooth

<sup>62</sup> [https://www.oireachtas.ie/parliament/media/committees/healthandchildren/health2015/JCHC-Report-on-the-Pre-Legislative-Scrutiny-of-the-General-Scheme-and-Heads-of-the-Adoption-\(Information-and-Tracing\)-Bill.pdf](https://www.oireachtas.ie/parliament/media/committees/healthandchildren/health2015/JCHC-Report-on-the-Pre-Legislative-Scrutiny-of-the-General-Scheme-and-Heads-of-the-Adoption-(Information-and-Tracing)-Bill.pdf)

Pp. 16

<sup>63</sup> Law lecturer in University College Cork (UCC)

“This judgement 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.”<sup>64</sup>

The (then) Minister for Children and Youth Affairs, James Reilly, TD, launched the General Scheme of the Bill on 27<sup>th</sup> July 2015. His comments at the time indicated that the Bill will seek to find a compromise in relation to the balancing of rights discussed above:

“I have been working in cooperation with the Attorney General to develop this scheme... [which] will greatly improve access to information, including provision of an adopted person’s birth certificate, with appropriate protections and an appeal mechanism to protect the rights of all parties. The proposals are the result of an intensive effort to identify a means of dealing with the significant legal and practical challenges that arise.”<sup>65</sup>

## Pre-legislative scrutiny

### *Pre-legislative scrutiny of the General Scheme of the Bill*

The [\*Adoption \(Information and Tracing\) General Scheme and Heads of Bill\*](#)<sup>66</sup>, first published in July 2015, was subject to pre-legislative scrutiny (PLS) by the Oireachtas Joint Committee on Health and Children (as was). The Committee held three hearings in October (8<sup>th</sup> and 22<sup>nd</sup>) and November (5<sup>th</sup>) 2015. A wide range of stakeholders were represented at the hearings including:

- [Adoption Authority of Ireland \(AAI\)](#)<sup>67</sup>;
- [Adoption Loss: The Natural Parents Network of Ireland](#)<sup>68</sup>;
- Adoptive Parents Association of Ireland;
- [Adoption Rights Alliance \(ARA\)](#)<sup>69</sup>;
- [Barnardos](#),<sup>70</sup> Post Adoption Services;
- Coalition of Mothers and Baby Home Survivors (CMABS);
- [Council of Irish Adoption Agencies \(CIAA\)](#)<sup>71</sup>;

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<sup>64</sup> [https://www.oireachtas.ie/parliament/media/committees/healthandchildren/health2015/JCHC-Report-on-the-Pre-Legislative-Scrutiny-of-the-General-Scheme-and-Heads-of-the-Adoption-\(Information-and-Tracing\)-Bill.pdf](https://www.oireachtas.ie/parliament/media/committees/healthandchildren/health2015/JCHC-Report-on-the-Pre-Legislative-Scrutiny-of-the-General-Scheme-and-Heads-of-the-Adoption-(Information-and-Tracing)-Bill.pdf) , Pp. 17

<sup>65</sup> <http://www.dcy.gov.ie/viewdoc.asp?DocID=3498>

<sup>66</sup> <http://www.dcy.gov.ie/documents/legislation/20150727AdoptionInfoandTracingHeadsofBill1.pdf>

<sup>67</sup> <http://www.aai.gov.ie/>

<sup>68</sup> <http://www.adoptionloss.ie/>

<sup>69</sup> <http://www.adoptionrightsalliance.com/>

<sup>70</sup> <http://www.barnardos.ie/adoption>

- [Department of Children and Youth Affairs \(DCYA\)](#)<sup>72</sup> representatives;
- [Irish First Mothers Group](#)<sup>73</sup>;
- Know My Own;
- (Former) Minister for Children and Youth Affairs, Dr. James Reilly;
- National University of Ireland (NUI), Maynooth, [Department of Law representative](#)<sup>74</sup>;
- [Treoir](#)<sup>75</sup>;
- [Tusla: The Child and Family Agency](#),<sup>76</sup>
- University College Cork (UCC), [Faculty of Law representative](#)<sup>77</sup>.

A summary of the draft heads of the General Scheme is included in the Appendices (Appendix 1):

The Committee was generally supportive of the measures included in the General Scheme of the Bill, provided that these measures are implemented in a timely manner. The Committee also made a number of recommendations and identified key issues for which further clarification was sought. The [PLS report](#)<sup>78</sup>, published in November 2015 made 11 specific recommendations in relation to the General Scheme of the Bill and raised a number of other issues for consideration.

The following illustration acts as a key for categorising the responses received from the Department in relation to the main issues raised by the Committee in their report. The ‘traffic light system’ employed below is intended to highlight the impact which the Committee’s PLS report has had on the drafting and final content of the published Bill.

L&RS categorisation of the Department’s response to the key issues identified by the Committee	‘Traffic light dashboard’ used in Table 4 to highlight the impact of the Committee’s PLS report
Key issue has had an impact on the drafting of the Bill.	Green
The Bill may be described as adopting an approach consistent with the key issue or the impact of the key issue on the drafting of the Bill is unclear.	Amber

<sup>71</sup> <http://councilofirishadoptionagencies.com/>

<sup>72</sup> [www.dcyia.ie](http://www.dcyia.ie)

<sup>73</sup> <http://irishfirstmothers.com/index.htm>

<sup>74</sup> Dr. Fergus Ryan <https://www.maynoothuniversity.ie/law/our-people/fergus-ryan>

<sup>75</sup> [www.treoir.ie/information-adoption.php](http://www.treoir.ie/information-adoption.php)

<sup>76</sup> <http://www.tusla.ie/services/alternative-care/adoption-services/>

<sup>77</sup> Dr. Conor O’Mahony, <http://research.ucc.ie/profiles/B012/conoromahony>

<sup>78</sup> [https://www.oireachtas.ie/parliament/media/committees/healthandchildren/health2015/JCHC-Report-on-the-Pre-Legislative-Scrutiny-of-the-General-Scheme-and-Heads-of-the-Adoption-\(Information-and-Tracing\)-Bill.pdf](https://www.oireachtas.ie/parliament/media/committees/healthandchildren/health2015/JCHC-Report-on-the-Pre-Legislative-Scrutiny-of-the-General-Scheme-and-Heads-of-the-Adoption-(Information-and-Tracing)-Bill.pdf)

Key issue has not had an impact on the drafting of the Bill.	Red
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Table 5 below has been compiled by the Oireachtas Library & Research Service (L&RS) and sets out the L&RS’ summary of each of key issues identified by the Committee (in relation to the General Scheme of the Bill). The Department’s responses to these issues have been summarised and categorised by the L&RS in accordance with the traffic light system set out above.

**Table 5: The impact of pre-legislative scrutiny (PLS) – an L&RS summary of the Committee report key issues and the Department’s observations thereon<sup>79</sup>**

No.	L&RS summary of key issue as per Joint Committee Report	How have each of the issues been addressed (either in whole or in part) in the Bill?
<p>1. <b>Balancing right to identity with right to privacy</b></p>	<p>The General Scheme of the Bill makes a “<i>presumption in favour of disclosure of adoption information.</i>” However, it also makes provision for non-disclosure of adoption information in cases where there are “<i>compelling reasons, such as may endanger the life of a person.</i>”</p> <p>The Committee recommended that the definition of ‘compelling reasons’ is further clarified and “<i>more tightly defined.</i>” If it endangers the life of a person then this should be supported by medical evidence.</p> <p>Conversely, the Committee recommended that compelling reasons for disclosing adoption information should equally be considered, including an adoptee’s need for accurate family medical history and genetic information if they seek medical treatment.</p>	<p>Legislative provision has now been made for the referral of decisions not to provide information required for birth certificate due to compelling reasons by the Agency to High Court</p>
<p>2. <b>Statutory Declaration</b></p>	<p>The General Scheme of the Bill requires adopted persons to sign a ‘Statutory Declaration’ stating that they will refrain from contacting a birth parent, if that person has requested ‘no contact’ on the register.</p> <p>The Committee could not find any ‘convincing reason’ to support the inclusion of the Statutory Declaration in the Bill. The Committee recommended considering an alternative provision such as attending a preparatory session to discuss issues of privacy before a Birth Certificate is released.</p>	<p>The requirement for statutory declaration has been removed from the Bill which now provides that an adopted person give an undertaking to the Agency not to —</p> <p>(a) contact, or attempt to contact, the birth mother, birth father or relevant guardian concerned, or</p> <p>(b) make arrangements with any other person for that person to contact, or attempt to contact, the birth mother, birth father or relevant guardian concerned.</p> <p>It should be noted that this element is part of a suite of measures designed to address the balancing of rights to privacy of birth parent vs the right to identify of the adopted person. Any amendment to this suite must be examined in the context of the relationship between all measures.</p>

<sup>79</sup> Source: Summarised by the Oireachtas Library & Research Service (L&RS), based on responses from the Department of Children and Youth Affairs in relation to the Oireachtas Committee’s PLS report.

		The undertaking is only required where a birth parent has indicated a preference for no contact or is not on the Register of Adoption Contact Enquires (TRACE)
3. Adoption Contact Register	<p>The General Scheme of the Bill makes provision for closing down the current (passive) National Adoption Contact Preference Register (NACPR) and the establishment of the (proactive) National Adoption Register.</p> <p>However, the Committee expressed concern that the Bill appears to discard the valuable and important information currently stored on the NACPR. The Committee recommended the Data Protection Commissioner be consulted about the possibility of transferring some of the existing data from NACPR to the new register.</p>	<p>There are approximately 11,500 entries on the current Register (the NACPR). The information currently on National Adoption Contact Preference register will be retained in perpetuity by the Adoption Authority of Ireland and will be accessible to those providing information and tracing service.</p> <p>The Register of Adoption Contact Enquires (TRACE) established under this Bill is a new Register. Administrative arrangements will be put in place to advise those currently on the NACPR of the establishment of new register and where a birth parent has previously registered a preference of no contact, these entries will transfer to the new register</p>
4. Fees	<p>The General Scheme of the Bill makes provision for charging fees for the use of the information and tracing service. The Committee recommends that the Minister reconsiders the inclusion of fees for adoption information services.</p>	<p>Legislative proposals in regard to fees have been withdrawn from the Bill</p>
5. Service Delivery	<p>The General Scheme of the Bill outlines Tusla’s role in providing a centralised, streamlined and standardised adoption information service. However, the Committee was also aware of current delays in delivering certain adoption services and is concerned about the possibility of further delays in providing information and tracing services in the future. Service delivery is time sensitive (due to the age profile of many of the service users) and so must be available to service users within a reasonable timeframe. <i>“This may have implications for capacity and funding of services.”</i></p> <p>The Committee is also concerned there is a possibility that the <i>“existing expertise/corporate memory and services provided by other agencies”</i> could be lost in the process of reform. What might the future role of accredited agencies currently providing post-adoption services look like and how can this be strengthened?</p>	<p>The issue of resources is kept under regular review</p>
6. 12 month awareness and information campaign	<p>The General Scheme of the Bill provides for a 12 month awareness campaign prior to the introduction of the new Adoption Information Register. The Committee suggests <i>“reducing the lead in to a much shorter time period, and to hold a shorter, more intense information/awareness campaign over a</i></p>	<p>The Awareness Campaign will operate for 6 months after commencement.</p>

	<i>six month period.</i> ” This is to better accommodate the “ <i>ageing cohort of families.</i> ”	
<b>7. Wrongful Registration and Illegal Adoptions</b>	<p>The Committee suggested that the terms ‘wrongful registration and ‘informal’ adoptions, used in the General Scheme of the Bill are misleading and “<i>do not adequately reflect the covert nature of many adoptions carried out in the past.</i>”</p> <p>The Committee recommended that the terminology used in the Bill is reconsidered and amended.</p> <p>In relation to illegal adoptions, the Committee recommended establishing a dedicated unit to form part of the new information and tracing services, to actively investigate evidence of wrong doing. Those affected should be “discretely approached and told of same, in line with the states duty of care.”</p>	The terminology in the Bill has been amended to use the term “ <b>incorrect registration</b> ” Persons subject to an incorrect registration can apply for information under the Bill
<b>8. Appropriate Funding for Services</b>	Given the likely increase in demand for counselling, advice, mediation and support services, the Committee recommended a review of service requirements arising from the General Scheme of the Bill.	The issue of resources is kept under regular review
<b>9. Inaccuracies in records held by AAI</b>	Some adoption legacy information held on record by the Adoption Authority is inaccurate, according to a number of stakeholders who presented to the members of the Committee. Therefore, the Committee recommended that measures be considered which would allow both birth parents and adoptees the opportunity to address the inaccuracies and correct them.	<p>It is currently permissible for any birth parent to place information on record pertaining to an adoption.</p> <p>The Child and Family Agency have advised that both birth parents and adopted persons have placed “statements” of this nature on record.</p>
<b>10. Appeals</b>	<p>The Committee recommended extending the period for appeals from 14 to 28 days (at a minimum).</p> <p>The Committee also recommends allowing appeals to be heard in the Circuit Court rather than the High Court.</p>	The Bill was amended to reflect this recommendation
<b>11. Step-Parent Adoption</b>	While outside the scope of the Bill, the Committee recommended that the anomalies which exist in relation to step parent adoption should be addressed by the Minister.	The issue of step parent adoption, specifically the anomalous situation whereby the natural parent of a child was required to relinquish their rights to the child and formally adopt him/her with their partner/spouse (who was not the child’s natural parent but their step parent) in order that they could become the child’s legal adoptive parent, is addressed in the <a href="#">Adoption (Amendment) Bill<sup>80</sup></a> , which was published in May 2016.
<b>12. Other issues for consideration</b>	<p>i. The importance of independent oversight for the new information and tracing system was emphasised.</p> <p>ii. A clearer definition of the term ‘relative’ (i.e. family member other</p>	<p>Noted</p> <p>It is proposed to amend the Bill to include cousins in the definition of relative.</p>

<sup>80</sup> <http://www.oireachtas.ie/documents/bills28/bills/2016/2316/b2316d.pdf>

	<p>than the natural parents, adoptive parents or adoptee) is requested;</p> <p>iii. The Committee asked for assurances that the constitutional right to privacy will not be used as an obstacle to carrying out adoption traces in future;</p> <p>iv. Will the Bill address the issue of 'forced adoptions'?</p>	<p>Noted</p> <p>Unclear what is meant by "forced adoptions".</p>
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Source: Oireachtas Library & Research Service (L&RS)

### *Mother and Baby Homes Commission of Investigation*

The following text box (Box 5 below) highlights the work of the [Commission of Investigation into Mother and Baby Homes](#)<sup>81</sup>, and in particular the Commission's investigation into 'forced' adoptions. The Oireachtas Committee report made specific reference to such adoptions and posed the question as to whether or not the *Adoption (Information and Tracing) Bill 2016* would address this issue. The published Bill does not make provision for forced adoptions as this would overlap with the work of the Commission.

### **Box 3: Mother and Baby Homes Commission of Investigation**

At hearings<sup>82</sup> held by the Joint Oireachtas Committee on Health and Children (as was), during pre-legislative scrutiny (PLS) of the General Scheme of the Bill, organisations representing those people whose lives have been affected by adoption criticised certain omissions from the General Scheme. (Refer to page 23 for further details). The criticism related to a perceived failure on the part of the Bill to address the issue of forced/illegal adoptions, particularly where children were adopted by married couples living outside Ireland (these children have come to be known in certain circles as "*banished babies*"). However, this issue is included in the *Terms of Reference of the Mother and Baby Home Commission of Investigation* and is currently being investigated by the Commission.

The [Commission of Investigation \(Mother and Baby Homes and Certain Related Matters\)](#)<sup>83</sup> is tasked with investigating practices and treatment of women and children resident in 14 mother and baby homes<sup>84</sup> and four county homes throughout the country between 1922 and 1998. The Commission was established under the [Commissions of Investigation Act 2004](#).<sup>85</sup>

<sup>81</sup> <http://www.mbhcoi.ie/MBH.nsf/page/index-en>

<sup>82</sup> 5<sup>th</sup> November 2015

<sup>83</sup> <http://www.mbhcoi.ie/MBH.nsf/page/index-en>

<sup>84</sup> Among them is the Bon Secours Mother and Baby Home, Tuam, County Galway. For further information on recent excavation works which took place at this site visit the Commission's website:

<http://www.mbhcoi.ie/MBH.nsf/page/Latest%20News-en>

<sup>85</sup> <http://www.irishstatutebook.ie/eli/2004/act/23/enacted/en/html>

The [Terms of Reference](#)<sup>86</sup> of the Commission, which was established on 20<sup>th</sup> February 2015, specifically refer to the placement of children, following their birth, in Mother and Baby homes. The terms include scope to examine the “*exit pathways*” of children who did not remain in the care of their parents in these institutions. This includes children exported to other countries (“*banished babies*”) and those whose adoptions were carried out illegally. This includes:

- (a) *The extent to which the child’s welfare and protection were considered in practices relating to their placement in Ireland or abroad;*
- (b) *The extent of participation of mothers in relevant decisions, including:*
  - (i) *The procedures that were in place to obtain consent from mothers in respect of adoption, and*
  - (ii) *Whether these procedures were adequate for the purpose of ensuring such consent was full, free and informed; and*
- c) *The practices and procedures for placement of children where there was cooperation with another person or persons in arranging this placement, this to include where an intermediary organisation arranged a subsequent placement.*<sup>87</sup>

The Commission released an interim report on 12<sup>th</sup> July 2016. The report is available [here](#)<sup>88</sup>. In a statement in the Dáil on 9<sup>th</sup> March 2017<sup>89</sup>, Minister for Children and Youth Affairs, Dr. Katherine Zappone, T.D., indicated that a second interim report will be published by the end of March 2017. It is expected that the Commission will publish its final reports, no later than the 17<sup>th</sup> February 2018. The terms of reference of the Commission do not include assisting people to research their identity or trace a birth relative.

### ***Heads present in the General Scheme which do not appear in the published Bill***

Each of the heads included in the General Scheme which have not been included in the published Bill are summarised in Table 6 below.

<sup>86</sup> <http://www.mbhcoi.ie/MBH.nsf/page/Terms%20of%20Reference-en>

<sup>87</sup> <http://www.mbhcoi.ie/MBH.nsf/page/Terms%20of%20Reference-en>

<sup>88</sup> [http://www.dcy.gov.ie/documents/mother\\_and\\_baby\\_homes/20160727MotherandBabyHomesInterimReportJuly2016.pdf](http://www.dcy.gov.ie/documents/mother_and_baby_homes/20160727MotherandBabyHomesInterimReportJuly2016.pdf)

<sup>89</sup> <https://www.dcy.gov.ie/viewdoc.asp?DocID=4155>

Table 6: Heads of the General Scheme not in the published Bill

Parts	Heads	Title	Note
3.	12.	Provision for charging fees	<p>In the General Scheme of the Bill, Head 12 proposes that “<i>the Agency and the Authority may charge a fee to an applicant for services.</i>”<sup>90</sup></p> <p>Furthermore, the Head states that the Agency or Authority may refuse to perform a function, if the prescribed fee is not paid.</p> <p>There is no reference to a provision for charging fees in the published Bill.</p>
3.	13.	Statutory Declaration	<p>In the General Scheme of the Bill, Head 13 proposes the information needed to apply for a birth certificate “will only be provided after the adopted person makes a statutory declaration before a notary public, a commissioner for oaths or a peace commissioner.”</p> <p>There is no reference to a statutory declaration in the published Bill. However, the published Bill proposes that adopted persons agree to a written ‘undertaking’ not to contact their birth parents or guardians or make arrangements with any other person to contact or attempt to contact a birth parent or guardian (s.41 (1) (2)).</p>
5.	23.	Wrongful Registration	<p>In the General Scheme of the Bill, the term ‘wrongful registration’ is used to define “<i>an incorrect registration of a birth under the Civil Registration Acts for the purpose of registering as a</i></p>

<sup>90</sup> Adoption (Information and Tracing) Bill: General Scheme and draft heads of the Bill, Pp.49

			<p><i>parent a person who is not a parent of that child.</i><sup>91</sup></p> <p>There is no reference to wrongful registration in the published Bill. Instead, the term incorrect registration is used throughout the Bill.</p>
6.	27.	Information for people whose adoption is registered on the register of intercountry adoption	<p>There is no reference at all to intercountry adoption in the published Bill. The Spring/Summer 2017 Legislative Programme published by Government introduces a new <i>Adoption (Information and Tracing) (No. 2) Bill</i> which will make provision for intercountry adoptions.</p>
8.	34.	Proceedings for Offences	<p>The General Scheme of the Bill makes reference to proceedings for offences which <i>“may be instituted within 12 months of the date of the offence or later in certain circumstances.”</i><sup>92</sup> It also references section 10(4) of the <i>Petty Sessions (Ireland) Act 1851</i>. The published Bill makes no reference to proceedings of offences within 12 months or otherwise; nor does it mention the <i>Petty Sessions (Ireland) Act 1851</i>.</p>

<sup>91</sup> Adoption (Information and Tracing) Bill: General Scheme and Heads of the Bill, Head 23, Pp.132

<sup>92</sup> Adoption (Information and Tracing) Bill: General Scheme and Heads of the Bill, Head 34, Pp.170

## Principal provisions

The [Adoption \(Information and Tracing\) Bill 2016](#) contains a total of 52 sections and is divided into six parts. A detailed summary of the Bill can be found in Table 2 on page 8 of this Digest. This section addresses the following principal provisions of the Bill:

### **Box 4: The principal provisions of the Bill dealt with in this Digest**

- The transfer, maintenance, preservation and safeguarding of records (Part 2)
- The search powers of Authorised Officers (Part 2)
- The establishment of a Register of Adoption Contact Enquiries (Part 3)
- The establishment of a tracing service and facilitation of contact between parties (Part 4)
- Applying for information relating to various parties affected by adoption, including an adopted person, birth parents, adoptive parents, relatives, etc. (Part 5)
- Support and Guidance Services available (Part 6)
- Offences and Immunity under the proposed Act (Part 6)

### ***Safeguarding of Records by the Adoption Authority of Ireland (AAI)***

Part 2 of the Bill provides for the gathering and safeguarding of all adoption records and any other relevant records relating to an adoption, by the Adoption Authority of Ireland (AAI).

Section 8 of the Bill identifies the responsibilities of information sources and any other relevant persons; as well as the timeframe for transferring adoption and other related records to the AAI. An information source shall furnish the Authority with a statement specifying the relevant records in its possession, within three months of commencement of this section of the Bill or within three months of having been identified as an information source by the Minister; whichever is the later.

Section 10 obliges the Authority to obtain and retain records on any person who was the subject of an adopted order before the date on which this section comes into operation. It also provides that an information source shall, not later than 3 months after the date on which an adoption order was made; transfer all relevant record pertaining to that adoption to the AAI. Where the Agency obtains records relating to informal care arrangements or incorrect registrations, it shall also transfer the information to the AAI.

Section 11 of the Bill states that it is the responsibility of AAI to create an index of all records in its possession and must develop and maintain a searchable database of these records.

Section 12 of the Bill requires the Authority to provide access to any relevant records it may hold and access to the index and database to any authorised persons for the purpose of performing their functions under the Act.

### ***The role of an Authorised Officer***

Section 13 of the Bill provides that an Authorised Officer (AO) is empowered to obtain any information necessary for the AAI to perform its functions under the *Adoption (Information and Tracing) Act 2016*. An AO may enter and inspect any premises (belonging to an information source or other relevant person directed to transfer this information under S.8 (6)), if there are 'reasonable grounds' to believe that a relevant record is being kept there. This is a very broad ranging power. The AO may enter premises without notice during business hours and at any time with reasonable notice to the person in charge of the premises. They may use reasonable force to gain entry. The AO may not enter a dwelling (such as a person's home) to search for a relevant record, without consent, unless they are in possession of a warrant obtained from a Judge of the District Court. The AO may also take copies of any relevant records.

### ***Tusla: The Child and Family Agency will establish and maintain a Register of Adoption Contact Enquiries (RACE)***

Section 14 of the Bill provides that Tusla will be responsible for establishing and maintaining a register (RACE) which will contain the names and contact details of relevant persons who apply to have their details recorded on the register. The register will record whether or not the relevant person is seeking or willing to share information and whether or not they are seeking or willing to make contact with a specified person (s.14 (6)).

Where, following commencement of the section, there is already an entry in the NACPR in respect of a birth parent who does not wish to have contact with another relevant person (usually the adopted child), s. 14(9)(a) states that this preference will be carried over and recorded on the new RACE register. Any person listed on the register may instruct Tusla to cancel their entry on the register or to remove or amend any information on that entry, at any time (s.14 (11)(a)(b)).

***Tusla: The Child and Family Agency will provide a tracing service to relevant persons***

Part 4 of the Bill seeks to establish the circumstances in which Tusla may request and share information in its role as provider of a tracing service.

Sections 16 and 17 provide that Tusla “shall take all reasonable steps” to locate a person for the purpose of:

- Obtaining information it deems necessary in performing its functions (S.17 (2)(a))
- Facilitating contact between that person and another who has requested contact (s.16 (b)) (unless that person has specified an unwillingness to be contacted) (s.16 (a)).

Section 17 (4) states that Tusla may not disclose any of the information it obtains in relation to its function to provide a tracing service.

Section 18 (3) of the Bill deals with information sharing between relevant bodies. This includes the sharing of personal data. Section 18 (7) defines ‘relevant bodies’ as Tusla, the AAI and the Minister of Children and Youth Affairs.

The sharing of personal data must be done in accordance with a ‘data exchange agreement’ “which shall specify the procedures to be followed by each party to the agreement”. The *Data Protection Acts 1988 to 2003* will apply to information shared under this section.

Section 20 states that Tusla must take all reasonable steps to locate a person in respect of whom a contact request has been made (s.20(2)). Section 20(1) states that a person who makes such a request (the ‘requester’) may request that Tusla facilitate contact between them and another person. Tusla will make all reasonable efforts to establish whether or not the other person wishes to be contacted by the ‘requester’. If they do not wish to be contacted, Tusla will inform the requester (s.20 (4)). Section 20 (5) states that, where that person is willing to have contact, Tusla “shall take such action as it considers appropriate to facilitate such contact.”

***Applying for information***

Part 5 of the Bill relates to the provision of information (such as adoption records and other related material) to relevant persons affected by adoption.

Section 23 provides for an adopted person aged 18 years or over to apply to Tusla for both identifying and non-identifying information. Identifying information includes birth certificate information, or a copy of their adoption order. Non-identifying information includes photos of

their birth relatives, early life information before they were adopted or information relating to the circumstances surrounding their adoption.

In the case of an adopted person seeking birth certificate information or a copy of their adoption order, s.25 states that the adopted person shall be furnished with this information if their birth mother is deceased. If the adoption took place before the commencement of this Act and the applicant's birth mother is alive but there is no entry on the register, the adopted person will receive the information requested only after the adopted person agrees to sign a 'written undertaking' (in accordance with s. 41 of the Bill).

Section 26 provides for the procedure to consult with a birth mother in cases where the adopted person has applied for birth certificate information/copy of an adoption order and where there is an entry in the register for the birth mother. Section 26 also applies in relation to future adoptions, where an application for birth certificate information is made on or after the date this section of the Bill comes into operation.

#### *Compelling reasons*

The birth mother will be notified in relation to the application made, and her entitlement to make a statement of 'compelling reasons' as to why the information should not be provided to the adopted person (within 12 weeks of the date of the notice). Otherwise the information will be provided to the adopted person.

In cases where birth mothers make a statement laying out why the information should not be provided, Tusla shall determine whether or not the reasons are compelling. If Tusla finds that there are compelling reasons, it will apply to the Circuit Court for approval of this decision. The decision made by Tusla (either to reject or accept the birth mother's statement), may be appealed to the Circuit Court, (by the birth mother or the adopted person) within 28 days of the date of the notification. The decision of the Circuit Court may be appealed to the High Court on a point of law (by Tusla, the birth mother or the adopted person) within 28 days of the date of the decision. The decision of the High Court shall be conclusive and final.

Section 28 provides for an almost identical procedure in relation to consultation with a birth father. However, a notification shall not be sent to a birth father, where the Minister has (under s.43) authorised the provision of the information to the adopted person. This provision is necessary in situations where Tusla has taken "*all reasonable steps to locate the birth father for the purposes of this section*" but has failed to locate him despite their best efforts (in accordance with s.28(2)).

Sections 30 and 31 provide for similar procedures in relation to consultation with a relevant guardian of an adopted person. The adopted person, the birth mother and the birth father, as well as a relevant guardian, are each entitled to avail of support and guidance services under s.45 of the Bill. Tusla will make each party aware of this entitlement in writing.

Sections 32 and 33 make provision for birth parents or relevant guardians to apply for information on adoptees. Once again, Tusla will take all reasonable steps to locate the adopted person (aged 18 years or over). In relation to s.32, the information will be provided to the applicant if the adopted person is deceased or if the Minister (in accordance with s.43) authorises the provision of the information, when all reasonable efforts to locate the adopted person have failed. The information will also be provided to the applicant if the adopted person consents.

Section 33 makes provision for a birth parent or relevant guardian to apply to Tusla for information relating to an adopted child (aged less than 18 years). The Agency shall inform the adoptive parent(s) of the adopted child about the request and ask that the adoptive parent(s) provide Tusla with the information requested. Tusla will then pass the information to the birth parent or relevant guardian. Nothing in s. 33 obliges or compels an adoptive parent to provide information or any other related material or items to the birth parent or guardian (s.33 (5)(a)). Nor does s.33 authorise Tusla to provide the birth parent or relevant guardian with any information relating to the identity of the adopted child or their adoptive parent, without the prior consent of the adoptive parent (s.33 (5)(b)). Information which the adoptive parent may choose to submit to Tusla for transfer to the birth parent or guardian includes:

- Information about the child's health, social and educational development and general well-being (s.33 (6)(a));
- Letters, photographs or other mementos relating to the adopted child (s.33 (6)(b));

The same entitlement to request similar information applies in relation to adoptive parents requesting early life information, birth parent/relative information, medical information etc., from birth parents, via Tusla. This is provided for in s.35 and s.36 of the Bill. Nothing in s. 35 obliges or compels a birth parent to provide information or any other related material or items to the adoptive parent. Section 37 of the Bill provides for an application for information to be made by the adopted parents on behalf of their child.

### ***Incorrect registration and informal 'adoption'***

Section 34 provides for a birth parent of a person over the age of 18 years, who the birth parent believes to have been the subject of an informal care arrangement or an incorrect

birth registration, to apply to Tusla for information. Once the application is made Tusla is required to conduct an investigation. Tusla will inform the birth parent of their findings, in accordance with s.34 (3). In circumstances where the person is deceased or where the Minister has authorised the provision of information, Tusla will inform the applicant (birth parent) in writing whether or not the person was or was not the subject of an informal care arrangement or an illegal registration (in accordance with s.34 (5)). This statement in writing will also be issued in cases where the person has consented to the provision of information to the applicant (s.34 (6)).

Section 39 of the Bill provides for a relative of an adopted person or a birth parent to apply to Tusla for information (held by either the Agency or the Authority) about a person (an adopted person including a person who was the subject of an informal care arrangement or a wrongful registration). In circumstances where the specified person is deceased or where the Minister has authorised the provision of information, Tusla will inform the applicant (relative) in writing (in accordance with s.39 (4)). This statement in writing will also be issued in cases where the specified person has consented to the provision of information to the applicant (s.39 (5)).

Section 41 of the Bill deals with the written undertaking given to the Agency by the applicant not to contact or attempt to contact a person (including birth mother or father or relevant guardian) or to make arrangements with another person to contact or attempt to contact the birth mother or father or the relevant guardian. The written undertaking does not have the same legal effect as the statutory declaration originally provided for in the General Scheme of the *Adoption (Information and Tracing) Bill 2016*.

### ***Informed Consent***

Tusla must comply with s.42 as it relates to consent under Part 5 of the Bill. Tusla must ensure that a person, in relation to whom an application has been received, is made aware of all of the information and each of the documents Tusla proposes to provide to the applicant concerned (s.42 (2)). That person may then consent to the release of all, some or none of the information, for which an application was made (s.42 (3)). Section 42(4) states that “a person’s consent...shall be in writing.” Also, under this section of the Bill a person may, withdraw his or her consent, at any time, before the information is provided to an applicant.

Part 6 of the Bill makes miscellaneous provisions, in relation to offences and immunity, support and guidance services and amendments to various acts.

### **Support and Guidance Services**

Section 45 of the Bill provides for Tusla to offer support and guidance services to various persons including:

- A person who applies to make an entry in RACE (for example an adopted person/a birth parent/a person who was the subject of an informal care arrangement or incorrect registration, etc.);
- A person who requests that Tusla facilitate contact with another person (for example, an adopted person seeking to make contact with their birth father);
- A person who makes an application for information relating to another person (for example, a birth mother seeking information in relation to a child who was adopted);
- A person in respect of whom, an application for information has been made (for example, an adopted person whose birth mother has sought information about them).

### **Offences and Immunity**

Section 46 of the Bill sets out the offences associated with breaching the provisions in this Bill, once it becomes an Act. Section 46 (1) states that an information source (i.e. Tusla, AAI, an accredited body both past and present, a registered adoption society or any person described as an information source under section 7) *“who conceals, destroys, mutilates or falsifies a relevant record shall be guilty of an offence.”* A person other than an information source who holds records related to adoption shall also be guilty of an offence should they fail to comply with a direction of the AAI (in accordance with s.46 (3)). It is unclear how these provisions will operate in practice.

Under s. 46 (5), if an offence is committed by a ‘body corporate’ with the consent of any person acting on behalf of or claiming to act on behalf of the ‘body corporate’ (such as a manager, director or officer), that person shall be liable to prosecution and punishment, as well as the body corporate, as if they had been acting as an individual alone (as under s. 46 (1)). Section 46 (4) states that a person found guilty of an offence under this section of the Bill will be liable, on a summary conviction, to a class A fine (€5,000), imprisonment of up to 6 months, or both. If convicted on indictment, the person shall be liable to a fine of up to €50,000, up to three years in prison, or both.

A person (employees or Board members, or former employees or former Board members of Tusla or the AAI), performing their duties as they relate to the role and functions of the Agency or the AAI, will not be liable in damages, unless an act is done or is omitted to be

done in bad faith (s.52 (1)). They each have immunity. So too does the State, unless the act or omission was done in bad faith (in accordance with s.52 (2)). This is a standard provision.

## Stakeholder Commentary

Stakeholder response to the *Adoption (Information and Tracing) Bill 2016* has been positive overall. The published Bill broadens the definition of adoption to incorporate informal ‘adoptions’ and ‘de facto’ /illegal adoptions which arose from wrongful registration on birth certificates. This aspect of the Bill has been welcomed by stakeholders.

A spokesperson for the **Coalition of Mother and Baby Home Survivors (CMABS)** described the Bill as “overwhelmingly positive”, in particular the provisions for non-standard adoptions:

“Illegally and informally adopted people will finally have rights in Ireland after decades of being treated as third class citizens.”<sup>93</sup>

The **Adoption Rights Alliance (ARA)** was more reserved in its comments, stating that it “cautiously welcomed” the contents of the Bill, while also entertaining a number of real concerns (see below).

In its [press release](#), **Barnardos** also described the inclusion of illegally and informally adopted people as a “welcome provision...[in this] *very long overdue Bill*.”<sup>94</sup> Barnardos went on to note that it was particularly pleased to see that this Bill provides an adopted person with an “unequivocal right ...to their birth certificate.”<sup>95</sup>

The initial provision in the [General Scheme](#) of the draft Bill, which suggested that service users would be required to pay an administration fee, if they wished to access information, has been dropped from the published Bill and this too was welcomed by Barnardos.

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<sup>93</sup> [‘Mixed reaction to laws on adoption tracing’](#), Irish Examiner, 26 November 2016

<sup>94</sup> [‘Long overdue ‘Adoption \(Information and Training\) Bill’ contains crucial provisions’](#), Barnardos Press Release, 25 November 2016 <https://www.barnardos.ie/media-centre/news/latest-news/long-overdue-adoption-bill-contains-crucial-provisions.html>

<sup>95</sup> [‘Long overdue ‘Adoption \(Information and Training\) Bill’ contains crucial provisions’](#), Barnardos Press Release, 25 November 2016 <https://www.barnardos.ie/media-centre/news/latest-news/long-overdue-adoption-bill-contains-crucial-provisions.html>

“[C]ost should never be a barrier, so it is welcome that the revised Bill states administrative bills will be covered by the State.”<sup>96</sup>

In an article in the Irish Examiner on 25 November 2016, entitled [‘Mixed reaction to laws on adoption tracing’](#),<sup>97</sup> the Adoption Rights Alliance condemned the provision in the Bill relating to a requirement for any individual applying for information in relation to a birth relative to sign a ‘written undertaking’, agreeing not to make contact if that person has withheld their consent to be contacted.

Barnardos’ press release also criticises this provision: “We remain deeply concerned... It is an extremely heavy handed approach, we would also question its effectiveness and application in practice.”<sup>98</sup>

In the [General Scheme](#) of the draft Bill, it was originally suggested that applicants, whose adoption took place prior to commencement of the legislation and whose birth relatives refused contact, would be required to sign a ‘statutory declaration’ stating that they would not make any attempt to contact them. This provision was discussed by the Joint Oireachtas Committee on Health and Children in their [Pre-legislative Scrutiny \(PLS\) report](#). Any reference to a statutory declaration has been removed from the published Bill. There is, however, a requirement for any relevant individual seeking information on a birth relative to make a ‘written undertaking’ not to contact that person, if that person has indicated that they do not wish to be contacted.

The Adoption Rights Alliance (ARA) has suggested that the reference to a written undertaking in the published Bill is merely a re-packaging of the statutory declaration.

“We are also appalled that some adopted people may be forced to sign “undertakings” that they will not contact their natural parents or other relatives... this appears to us to be a rebranding of the much derided ‘statutory declaration’.”

The ARA is also concerned that implications of breaching such an undertaking are not clearly laid out in the published Bill. *“No mention is made in the current Bill as to the penalties faced for those who breach the ‘undertaking’.”*<sup>99</sup>

In its press release, Barnardos suggests an alternative approach to the written undertaking:

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<sup>96</sup> [‘Long overdue ‘Adoption \(Information and Training\) Bill’ contains crucial provisions’](#), Barnardos Press Release, 25 November 2016 <https://www.barnardos.ie/media-centre/news/latest-news/long-overdue-adoption-bill-contains-crucial-provisions.html>

<sup>97</sup> <http://www.irishexaminer.com/ireland/mixed-reaction-to-laws-on-adoption-tracing-432475.html>

<sup>98</sup> [‘Long overdue ‘Adoption \(Information and Training\) Bill’ contains crucial provisions’](#), Barnardos Press Release, 25 November 2016

<sup>99</sup> <http://www.irishexaminer.com/ireland/mixed-reaction-to-laws-on-adoption-tracing-432475.html>

“Barnardos recommend an adopted person be offered an individual or group preparation session, similar to the system used in the UK when they revised their laws in 1976. Such an approach is more holistic, informative and supportive.”<sup>100</sup>

Barnardos also highlight the “administrative challenges” which are likely to be inherent in replacing the existing National Adoption Contact Preference Register (NACPR) with a new Register of Adoption Contact Enquiries (RACE) and the importance of adequate funding to the two main agencies responsible for implementing the main provisions of the Bill: the Adoption Authority of Ireland and in particular, Tusla.

“[W]e know the successful implementation of the Bill is contingent on a greater availability of services and staff within Tusla. Presently, the continued underfunding of Tusla means lengthy waiting lists in accessing information and tracing services are common. Tusla and the accredited adoption agencies must be appropriately resourced to ensure the effective timely enactment of this legislation. Adopted people have already waited too long.”<sup>101</sup>

Finally, the Coalition of Mother and Baby Home Survivors (CMABS) condemned the expected six month delay in commencing the Act, in order to facilitate the roll out of a high profile media campaign, saying the provision needed to be “scrapped immediately.”<sup>102</sup> Their concerns relate to the advancing age of many of the people involved, particularly birth parents, whom they fear may have passed away before the law comes into effect.

## Performance Information Scrutiny

Parliament’s oversight role extends to the scrutiny of how government is performing. One of the main functions of the Houses of the Oireachtas is to provide oversight of government activities and hold the government to account. Parliament can use performance scrutiny as a means to exercise this function. At its core, performance scrutiny is about the efficient and effective use of scarce resources to improve the lives of the people living within a State. By highlighting issues of poor policy performance parliament can hold governments to account and ensure that scarce financial resources are used more appropriately. The use of performance information does not however guarantee that effective scrutiny will be facilitated as a more comprehensive evaluation may be required to examine the overall impact of a Government programme, policy or legislation.

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<sup>100</sup> <https://www.barnardos.ie/media-centre/news/latest-news/long-overdue-adoption-bill-contains-crucial-provisions.html>

<sup>101</sup> <https://www.barnardos.ie/media-centre/news/latest-news/long-overdue-adoption-bill-contains-crucial-provisions.html>

<sup>102</sup> <http://www.irishexaminer.com/ireland/mixed-reaction-to-laws-on-adoption-tracing-432475.html>

This section explores the issue of performance information and scrutiny in the context of the *Adoption (Information and Tracing) Bill 2016* and examines potential performance indicators that could be useful in scrutinising the legislation.

For further information on Performance Information and scrutiny see the *L&RS Spotlight on Parliamentary Scrutiny of Government Performance*, available [here](#)<sup>103</sup>.

Two of the main provisions in the *Adoption (Information and Tracing) Bill 2016* would benefit from performance scrutiny. These are:

- a) Access to information required to apply for a birth certificate; and,
- b) Establishment of a proactive register of adoption contact enquiries.

This section examines these provisions under four main headings, as follows:

1. Baseline information – provides background to this policy area, setting the baseline from which the provisions may be judged.
2. Input indicators – financial and non-financial investment needed to deliver the provisions
3. Output indicators – the goods and/or services produced using the inputs above
4. Outcome indicators – include the immediate benefits or effects of a provision, as well as the longer term effects or benefits.

### **1. Baseline Information**

#### *a) Birth certificates*

Between January 2014 and September 2016<sup>104</sup>:

- 170 applications for birth certificates were made, of which:
- 67 were released to applicants;
- 20 were refused;
- Information on the remaining applications is not available.

#### *b) Adoption Register*

Between January 2014 and September 2016:

- 1,771 applications to the register were made, of which:
- 269 matches were facilitated
- Information on the remaining applications is not available.

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<sup>103</sup> [http://vhllms-a01/AWData/Library2/20160128SpotlightParliamentaryscrutinyofgovernmentperformance\\_165120.pdf](http://vhllms-a01/AWData/Library2/20160128SpotlightParliamentaryscrutinyofgovernmentperformance_165120.pdf)

<sup>104</sup> Latest dates for which data is available.

Other baseline data which may need to be gathered or disseminated includes:

- Number of applications to courts appealing decisions refusing adoption information; and,
- Service user satisfaction with the current register (NACPR).

## 2. Input Indicators

### *Financial*

The full year cost to the Exchequer of implementing the Bill (through funding for Tusla and the Adoption Authority of Ireland) is estimated to be:

- €5.4 million in 2017<sup>105</sup> (€4.2 million for Tusla and €1.2 million for AAI)
- €5.1 million in 2018 (€4.7 million for Tusla and €0.33 million for AAI)

While no further breakdown of expenditure is provided in the [explanatory memorandum](#) to the Bill, funding may be needed for some or all of the following:

- Storage and preservation costs for adoption files transferred from original adoption agencies;
- Media budget for a six month advertising campaign for the promotion of RACE; and,
- Administration costs associated with higher volumes of requests for birth certificates and implementation of the tracing service.

### *Human Resources*

The explanatory memo does not offer a breakdown of funding in relation to expenditure on human resources. However funding may be needed for some or all of the following:

- Recruitment of additional staff such as social workers, archivists, cataloguers, researchers and administrators; and,
- Training costs, including records management, sensitivity training (for interaction with birth parents, adoptees, adoptive parents), mediation, etc.

## 3. Output Indicators

The goods or services produced using the funding outlined above may include:

- Greater numbers of adoption related records preserved by AAI;
- Tusla to establish, launch and maintain the Register of Adoption Contact Enquiries;

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<sup>105</sup> “It is not anticipated that full year costs will be required for 2017 as it is not intended that the Bill will be commenced at the start of the year”. Explanatory Memorandum to the Adoption (Information and Tracing) Bill 2016, Pp. 17, Department of Children and Youth Affairs

- Greater numbers of applications for adoption related information (including birth certificates) to be processed for parties affected by adoption, including informal ‘adoption’ and incorrect registration;
- Greater numbers of searches for relatives on behalf of applicants to RACE, including those persons incorrectly registered and those who were informally ‘adopted’;
- Greater numbers of matches and contacts facilitated between parties affected by adoption, including informal ‘adoption’ and incorrect registration.

#### **4. Outcome Indicators**

##### *Result/Impact indicators*

##### *a) Birth certificates*

If the number of applications for birth certificates received and processed, and the number of releases are used as baselines from which the new policy may be judged, then, any increase, may be viewed as policy successes. However, when making an assessment in relation to the performance of this particular aspect of the Bill, consideration should also be given to the emotional impact which such policies may have on applicants who do not wish to share their personal information or to have contact.

##### *b) Adoption Register*

If the number of NACPR matches are used as a baseline from which the new policy may be judged, then, any increase in the number of matches and the number of contacts facilitated (arising from applications to RACE in future), could be viewed as policy successes.

Other result/impact indicators may include:

- Changes in the number of applications to courts in relation to decisions refusing adoption information;
- Greater numbers of adoption related records preserved for posterity; and,
- Improvements in health due to increased sharing of family medical histories.

**Table 7: A range of potential Performance Indicators for the *Adoption (Information and Tracing) Bill 2016***

<p><b>Objective of the Bill:</b> To provide for the collection, maintenance and preservation of adoption records by the Adoption Authority of Ireland; to provide for the establishment and maintenance of a Register of Adoption Contact Enquiries and to make available a tracing service to certain persons and their birth relatives, for the purpose of information sharing and to facilitate contact between such persons.</p>	
<p><b>BASELINE INFORMATION</b></p> <ul style="list-style-type: none"> <li>• 44,270 adoption orders since 1953<sup>106</sup></li> <li>• 170 applications for birth certificates<sup>107</sup></li> <li>• 67 birth certificates released<sup>108</sup></li> <li>• 1771 applications to the NACPR</li> <li>• 269 matches made using NACPR</li> <li>• Service user satisfaction with the current register</li> <li>• Number of court applications appealing refusal of birth certificate information</li> </ul>	<p><b>INPUT INDICATORS</b></p> <ul style="list-style-type: none"> <li>• Estimated cost of €5.4 million in 2017 and €5.1 million in 2018. This may be used to cover the cost of: <ul style="list-style-type: none"> <li>➤ Storage of adoption files</li> <li>➤ Media campaign to raise awareness of RACE</li> <li>➤ Admin costs</li> <li>➤ Recruitment</li> <li>➤ Training</li> </ul> </li> </ul>
<p><b>OUTPUT INDICATORS</b></p> <ul style="list-style-type: none"> <li>• Number of requests under various sections of the Bill</li> <li>• Number of applications processed</li> <li>• Number of searches made</li> <li>• Number of contacts facilitated</li> <li>• Processing times for applications</li> <li>• Service user satisfaction levels with the new process</li> </ul>	<p><b>OUTCOME (RESULT/IMPACT) INDICATORS</b></p> <ul style="list-style-type: none"> <li>• Number or increase in number of applications for birth certificates</li> <li>• Number or increase in number of birth certificates released</li> <li>• Number of increase in number of application to RACE</li> <li>• Number or increase in number of matches made using RACE</li> <li>• Service user satisfaction with the new register</li> <li>• Number or increase in number of court applications appealing refusal of birth certificate information</li> </ul>

<sup>106</sup> This figure does not take account of ‘informal’ adoptions made before or after 1953, nor does it account for incorrect registration of births.

<sup>107</sup> Between 2014 and September 2016

<sup>108</sup> Between 2014 and September 2016

## Appendices

### Appendix 1: Summary of the General Scheme of the *Adoption (Information and Tracing) Bill*

Parts	Heads
<b>Part 1:</b> <b>Preliminary and general matters</b>	<ol style="list-style-type: none"> <li>1. Short title and commencement</li> <li>2. Interpretation</li> <li>3. Regulations</li> <li>4. Expenses</li> <li>5. Assisting person to exercise right under the Bill</li> </ol>
<b>Part 2:</b> <b>Safeguarding adoption records</b>	<ol style="list-style-type: none"> <li>6. Custody and preservation of adoption records by Authority</li> <li>7. Adoption Information</li> <li>8. Access to Registry of Adoption Records</li> <li>9. Authorised officers and warrants</li> </ol>
<b>Part 3:</b> <b>Information and tracing service</b>	<ol style="list-style-type: none"> <li>10. Function of agency to provide information and tracing service</li> <li>11. Establishment of Adoption Information Register of Ireland</li> <li>12. Allocation of monies for performance of functions by Agency and Authority and provision for charging fees</li> <li>13. Information for adopted persons where adoption order made prior to commencement of Bill</li> <li>14. Information for adopted persons where adoption order made following commencement of Bill</li> <li>15. Information for birth parent in respect of adopted child over 18 years of age</li> <li>16. Information for birth parent in respect of adopted child under 18 years of age</li> <li>17. Information for adoptive parent in respect of adopted child under 18 years</li> <li>18. Relatives and other persons</li> </ol>
<b>Part 4:</b> <b>Informal adoption</b>	<ol style="list-style-type: none"> <li>19. Where applicant for information was informally adopted</li> <li>20. Application by informally adopted person for information necessary to obtain birth certificate</li> <li>21. Where applicant for information is birth parent of person who was informally adopted</li> <li>22. Further criteria for consideration by Agency when dispensing with consent under Part 4</li> </ol>
<b>Part 5:</b> <b>Wrongful registration</b>	<ol style="list-style-type: none"> <li>23. Where applicant for information was wrongfully registered</li> <li>24. Application by wrongfully registered person for information necessary to obtain birth certificate</li> <li>25. Where applicant for information is birth parent of person who was wrongfully registered</li> <li>26. Further criteria for consideration by Agency when dispensing with consent under Part 5</li> </ol>
<b>Part 6:</b> <b>Information for person whose adoption is registered on register of intercountry adoption</b>	<ol style="list-style-type: none"> <li>27. Information for person whose adoption is registered on the Register of Intercountry adoptions</li> </ol>

<p><b>Part 7:</b>  <b>Agency to facilitate contact between parties</b></p>	<p>28. Agency to facilitate contact between parties</p>
<p><b>Part 8:</b>  <b>Miscellaneous</b></p>	<p>29. Transitional provision  30. Guidelines  31. Data protection  32. Indemnity  33. Offences, falsifications and penalties  34. Proceedings for offences  35. Amendment to <i>Freedom of Information Act 1997</i>  36. Amendment to <i>Civil Registration Act 2004</i></p>
<p><b>Part 9:</b>  <b>Consequential amendments to <i>Adoption Act 2010</i></b></p>	<p>37. Amendment of Section 14 of <i>Adoption Act 2010</i>  38. Amendment of Section 58 of <i>Adoption Act 2010</i>  39. Amendment of Section 88 of <i>Adoption Act 2010</i>  40. Issues arising from <i>Children and Family Relationships Act 2015</i></p>