



An Bille Uchtála (Faisnéis agus Lorgaireacht), 2016
Adoption (Information and Tracing) Bill, 2016

Meabhrán Míitheach agus Airgeadais
Explanatory and Financial Memorandum



**AN BILLE UCHTÁLA (FAISNÉIS AGUS LORGAIREACHT), 2016
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EXPLANATORY AND FINANCIAL MEMORANDUM

Purpose of Bill

The main purpose of the Adoption (Information and Tracing) Bill 2016 is to provide for a scheme whereby adoption information, including information required to obtain a birth certificate, may be provided to an adopted person subject to certain conditions. The Bill also provides that birth parents and other persons may obtain information about an adopted person, subject to the other party's consent. The Bill further provides that a person who may have been the subject of an 'informal care arrangement' or an 'incorrect registration' and a birth parent of that person is entitled to apply for information under *Part 5* of the Bill.

Principal Elements of the Bill

Part 1 – provides for the short title and commencement, interpretation and definitions, regulations, expenses, the allocation of moneys by the Agency and Authority to carry out their functions.

Part 2 – provides for the safeguarding and gathering of adoption records and relevant records by the Adoption Authority of Ireland.

Part 3 – provides for the establishment of the Register of Adoption Contact Enquiries. The register shall record the names, contact details and preferences of specified persons in relation to contact with other specified persons

Part 4 – provides for a tracing service, to be provided by the Child and Family Agency, to locate persons to facilitate information sharing and contact between adopted persons and their birth parents or other persons. This Part also provides that an accredited body may perform certain functions under this Part, where it has been authorised to do so.

Part 5 – provides for the procedure for a person to make an application to be entered on the register, and to make an application for information to the Agency. This Part details the procedures to be followed after the making of an application and sets out the circumstances in which a person may rely on compelling reasons not to provide the information requested. It further sets out where consent is required before the requested information can be provided and details how the requested information is to be provided to the applicant.

Part 6 – provides for miscellaneous provisions, including an obligation on the Agency to provide support and guidance to applicants.

Provisions of the Bill

PART 1

Preliminary and General

Section 1 – Short title and commencement

Section 1 provides that the Act may be cited as the Adoption (Information and Tracing) Act 2016. It also provides that the Act may come into operation on such day, or days, as the Minister may appoint by order, or orders, and that different days may be appointed for different purposes or different provisions.

Section 2 – Interpretation

Section 2 is a standard provision defining certain words and terms used in the Bill.

Section 3 – Regulations

Section 3 provides for a general regulation-making power for the Minister for Children and Youth Affairs.

Section 4 – Expenses

Section 4 is a standard provision to provide that expenses incurred by the Minister in the administration of the Act are to be paid out of monies provided by the Oireachtas.

Section 5 – Allocation of moneys for performance of functions by Agency and Authority

Section 5 provides that, from available funds within each financial year, the Agency and the Authority shall allocate an amount of moneys such as the Minister (with the consent of the Minister for Public Expenditure and Reform) determines for the operation and administrative costs arising from their obligations under the Act.

Section 6 – Person may authorise another to make application under section 12(2) or Part 5

Section 6 provides that a person who is authorised to make an application under *section 12* or *Part 5* may authorise, in writing and in a manner specified by the Agency, another person who has attained the age of 18 years to make an application on their behalf, and to act on their behalf for the purposes of that application. This authorisation may be withdrawn at any time by the person who made it. This section also requires the Agency and the Authority to satisfy themselves as to the identity of a person authorised under this section.

PART 2

Safeguarding Adoption Records

Section 7 – Minister may prescribe person to be information source

Section 7 provides that the Minister may prescribe a person who has, at any time, made or attempted to make arrangements for the adoption of a child to be an information source.

Section 8 – Information source or other person to transfer relevant records where directed by Authority

Section 8 provides for the transfer of relevant records from an information source to the Adoption Authority of Ireland following a direction from the Authority. This section provides that, within three months of the commencement of this section, an information source shall furnish a statement of the relevant records in its possession to the Authority. Where an information source has furnished a such a statement but later becomes aware that a relevant record was in its possession on the date of the statement that was not specified in the statement, it shall furnish a statement to the Authority of the record and the reasons why the record was not specified in the original statement. A statement under this section shall specify the nature, current location, and condition of the record. This section also requires the Authority to issue a direction regarding the transfer of the relevant record to the Authority within six months of receiving a statement. The date specified for the transfer shall be not later than six months after the date of the direction or, if the Authority is not satisfied that it will be in a position to take the records concerned, such later date as is approved by the Minister. The Authority shall make all necessary arrangements for the transfer of records concerned including all necessary arrangements to ensure safe receipt by it of the records.

Section 9 – Information source or other person may transfer relevant record

Section 9 provides that an information source, other than the Agency, may transfer a relevant record to the Authority, notwithstanding the fact that it was not issued with a direction to do so by the Authority. This section also provides that a person, other than an information source, who is in possession of a relevant record, may transfer such records to the Authority, notwithstanding the fact that it was not issued with a direction to do so by the Authority.

Section 10 – Authority to retain and obtain relevant records

Section 10 obliges the Authority to retain relevant records in respect of each person who is the subject of an adoption order made before the date on which this section come into operation. Where the Authority makes an adoption order on or after the date on which this section comes into operation, the Authority shall obtain and retain relevant records in respect of the adopted child. An information source shall, not later than 3 months after the date on which the adoption order was made, transfer to the Authority all relevant records relating to the adoption concerned that are in their possession. Where the Agency, in the performance of its functions under the Act, creates or obtains a relevant record relating to a person who was the subject of an informal care arrangement, or is, or was, the subject of an incorrect registration, it shall transfer the information to the Authority.

Section 11 – Authority to hold and maintain relevant records

Section 11 requires the Authority to hold all relevant records held by it on the date on which this section comes into operation, transferred to it by an information source or Agency, whether or not in compliance with a direction, transferred by an information source other than the Agency or transferred by a person without a direction, and retained or obtained by it or transferred to it by the Agency under *section 10*. The Authority shall prepare an index of the records and create and maintain a searchable electronic database of the records. This section also provides that the Minister may at any time issue guidelines to the Authority in writing in relation to the performance of its functions under this section.

Section 12 – Access to relevant records held under section 11

Section 12 requires the Authority to grant access to the relevant records held by it, as well as to the index and electronic database, to persons authorised by the Authority or the Agency for the purpose of performing their functions under this Act. This section also provides that a person who has made an application under *Part 5* may apply to the Authority for access to relevant records held by the Authority. On receipt of an application, the Authority is obliged, in consultation with the Agency, to make arrangements for the provision of access to the applicant. This shall not be construed as authorising the Agency or the Authority to provide access to a record, or part of a record, that contains information that has not been provided to the applicant under *Part 5*.

Section 13 – Search powers

Section 13 provides for the powers of authorised officers of the Authority to obtain any information necessary for the performance by the Authority of its functions under this Act. This section provides that an authorised officer may enter and inspect any place, being a premises of an information source or person other than an information source, at which the Authority has reasonable grounds to believe that a relevant record is being kept. Authorised officers may enter and inspect a place at any time during normal business hours with or without prior notice and at any other time on reasonable notice to the person in charge of the place. An authorised officer shall not enter a dwelling other than with the consent of the occupier or pursuant to a warrant obtained from a judge of the District Court for the purposes of enabling a named authorised officer to carry out an inspection of a place where it is reasonably believed that a relevant record is being kept. A warrant issued for this purpose may provide for the named authorised officer to be accompanied by such other authorised officers or members of an Garda Síochána, as may be necessary, to enter the place at any time and exercise their powers.

This section also allows an authorised officer to inspect and take copies of any records, or extracts from records (including records stored in non-legible form) that they find in the course of their inspection. They may require any person at the place concerned to produce any records that are in that person's possession or procurement or under that person's control and, where there is data equipment at the place, to give the authorised officer such reasonable assistance as the authorised officer may require for the purposes of their functions under the Act.

This section also allows the Authority to appoint in writing such persons or classes of persons as it considers appropriate to be authorised officers for the exercise of the functions of an authorised officer under this section. An authorised officer shall be furnished with a warrant of his or her appointment and shall produce the warrant if requested.

PART 3

Register of Adoption Contact Enquiries

Section 14 – Register of Adoption Contact Enquiries

Section 14 provides that the Agency shall establish and maintain a register, to be known as The Register of Adoption Contact Enquiries, to record the name and contact details of persons who apply to be entered on the register. In addition, the register will record whether a person is seeking information and willing or not to provide information. It will further record whether a person is seeking and, as appropriate, willing or not to have

contact with a specified person. The register shall be used to facilitate the performance by the Agency, and accredited bodies authorised under *section 21*, of their functions under *Parts 4* and *5* of the Act.

A person who is, or believes themselves to be, a relevant person, a person who is, or believes themselves to be, the birth parent of a relevant person, a person who is a relevant guardian in relation to an adopted person, an adoptive parent of an adopted child, or a relative of relevant person or birth parent may apply to have an entry made on the register in respect of him or her. A person who makes an application for information under *Part 5* of the Act shall be deemed to have made an application to be entered on the register. The register shall also be used for the provision of information to an applicant under *Part 5* this Act.

This section provides that a person may apply to have an entry made on the register in such a manner as may be specified by the Agency. The applicant may provide a statement indicating, in relation to a specified person, whether they are seeking information in relation to the specified person and the nature of that information, whether they are willing to provide information to the specified person and the nature of that information, and whether they are seeking contact with, willing to be contacted by, or not willing to be contacted by, the specified person. Where, on the date of the commencement of the section, there is an entry in the National Adoption Contact Preference Register in respect of a birth parent that records that he or she does not wish to have contact with the relevant person, the Agency shall make an entry in the register in respect of that birth parent, and that contact preference shall be recorded.

An entry in the register shall specify the applicant's forename and surname, including any name previously used, their date of birth, address and contact details, contact preferences, which category of person they are under this section, what information they are seeking or willing to provide, contact preferences, any statement made under this section and any such details relating to a person specified by them in the statement. This section also provides that a person in respect of whom there is an entry on the register may require the Agency to cancel the entry or amend or remove any information contained in the entry.

PART 4

Tracing

Section 15 – Interpretation (*Part 4*)

Section 15 provides for the definition of terms used in *Part 4* of this Act.

Section 16 – Agency to provide tracing service

Section 16 provides that the Agency shall take all reasonable steps, in accordance with guidelines under *section 19*, to locate a person specified in a statement made under *section 14*, requested under *section 20* for the purpose of facilitating contact, where the location of the person is required under *Part 5*, or it is necessary to locate the person for the purpose of obtaining information relating to a person for the provision of this information to an applicant under *Part 5*.

Section 17 – Agency, may request information

Section 17 provides that the Agency may request a person to provide it with, or access to, information that is in the possession of, or under the control of, the person, where the Agency reasonably requires the information concerned for the purposes of enabling it to perform the functions referred

to in *section 16*, or the provision of information under *Part 5*. The Agency shall not disclose information obtained by it, other than as provided for by the Act.

Section 18 – Sharing of information

Section 18 provides that a relevant body, meaning the Authority, the Agency, the Minister, and an accredited body that is authorised under *section 21*, may share a relevant record, or other information, with another relevant body, if it is satisfied that the record or information is required by the other relevant body for the performance of its function under this Act. Where information is shared, it shall be in accordance with a data exchange agreement entered into by the relevant bodies. The Data Protection Acts 1988 and 2003 shall apply to information shared under this section.

Section 19 – Guidelines (Part 4)

Section 19 provides that the Minister may issue guidelines for the purpose of providing practical guidance to the Agency in respect of its functions under this Part. Guidelines under this section may include the procedures to be followed for the purpose of locating a person under *section 16*, and the records that are likely to be relevant for locating a person.

Section 20 – Agency to facilitate contact between parties

Section 20 provides that a person, requester, may request the Agency to facilitate contact between him or her and a specified person, who he or she has specified under *section 14*. Upon receiving a request the Agency shall without undue delay take all reasonable steps to locate the specified person, in accordance with any guidelines under *section 19*. The Agency shall ascertain from the specified person whether or not they are willing to have contact with the requester. Where the specified person is willing to have contact, the Agency shall take action, as it considers appropriate to facilitate such contact. Where the specified person is unwilling to have contact, the Agency shall inform the requestor of that fact.

Section 21 – Agency may authorise accredited body to perform functions under Part 4

Section 21 provides that the Agency may authorise an accredited body to perform the functions of the Agency under this Part. An accredited body may only perform the functions of the Agency where authorised to do so.

PART 5

Provision of Information

Section 22 – Interpretation (Part 5)

Section 22 provides that, for the purposes of this Part, there are compelling reasons not to provide the applicant with information where the provision of information, having regard to all the circumstances, is likely to endanger the life of a person.

Section 23 – Relevant person may apply to Agency for items and information

Section 23 provides that a person who has attained the age of 18 years and who is, or reasonably believes himself or herself to be, a relevant person may apply to the Agency for the provision of items or information that relates to him or her that is held by the Agency or Authority. This information can include non-identifying information such as birth relative information, birth parent information, early life information or medical information. It also extends to identifying information such as birth

certificate information, the forename and surname of father or a copy of an adoption order made in respect of him or her. Items held by the Agency or Authority may include items provided by birth parents or others. The applicant may apply for other information relating to him or her, to his or her birth parents or birth relatives, or to the circumstances in which he or she became a relevant person.

Section 24 – Agency to provide certain items and information on application under *section 23(1)*

Section 24 provides for where an application under *section 23(1)* is for non-identifying information or provided items. Where the request for information relates to birth relative, birth parent, early life or medical information, the Agency shall provide the applicant with a statement in accordance with *section 40*. Where the application is made for provided items held by the Agency or the Authority, the Agency is obliged to provide those items to the applicant.

Section 25 – Application under *section 23(1)* for birth certificate information or adoption order

Section 25 provides for an application made in accordance with *section 23(1)* for the provision of identifying information, including birth certificate information or a copy of an adoption order. Where the Agency is satisfied that the applicant's birth mother is deceased, or where the adoption was effected before this section comes into operation and there is no entry on the register in respect of the applicant's birth mother, and the applicant has given an undertaking, in accordance with *section 41*, not to attempt to contact her, the Agency shall, where the application is for birth certificate information, provide a written statement in accordance with *section 40*. Where the application is for a copy of an adoption order made in respect of the applicant, the Agency is obliged to provide the applicant with the document concerned.

Section 26 – Application under *section 23(1)* for birth certificate information or adoption order: consultation with birth mother

Section 26 provides for the procedure to consult with the birth mother in circumstances where an application made in accordance with *section 23(1)* relates to the provision of birth certificate information or a copy of an adoption order, and where there is an entry in the register in respect of the applicant's birth mother, or the adoption was effected on or after the date on which this section comes into operation.

This section provides that the Agency shall send a notification to the applicant's birth mother, informing her of the making of the application, and the information to which it relates and of the applicant's entitlement under *section 45* to support and guidance. The Agency shall also inform the birth mother of her entitlement to provide a statement of compelling reasons as to why the information, or adoption order, should not be provided and that, if she does not avail of this entitlement or informs the Agency that she does not wish to avail of her entitlement, the information or adoption order shall be provided to the applicant. She shall also be informed of her entitlement under *section 45* to support and guidance. A notification may be sent to her by post in a prepaid registered letter to the address most recently entered on the register in respect of her or, where there is no such entry, the address last known to the Agency or the Authority in respect of her.

Where the birth mother is of the view that there are compelling reasons why the information should not be provided to the applicant, she may, within 12 weeks of the date of the notification, provide a written statement to the Agency of her reasons supporting that view. The Agency shall determine whether there are compelling reasons not to provide the information or

adoption order to the applicant, having considered any statement provided by the birth mother and any information otherwise available to it that is relevant to its determination.

Where the Agency determines that there are compelling reasons, it shall make an application to the Circuit Court seeking the approval of the Court of its determination to refuse to provide the requested information or adoption order to the applicant. An application to the Circuit Court by the Agency shall be accompanied by a statement by the Agency of the reasons for its determination and a copy of the statement, if any, provided by the birth mother. Where the Circuit Court is satisfied that there are compelling reasons not to provide the requested information or adoption order, it shall approve the determination of the Agency or, in any other case, decline to approve the determination.

Where the birth mother has provided a statement and the Agency has determined that there are no compelling reasons not to provide the information or adoption order, the Agency shall notify the birth mother of its determination, the effect of *subsections (14) to (16)*, and her entitlement to appeal to the Circuit Court against the determination of the Agency within 28 days of the date of the notification. The Circuit Court shall allow the appeal where it is satisfied that there are compelling reasons not to provide the information or adoption order. Where the Circuit Court has made a decision under *subsection (8) or (11)* the birth mother, the Agency or the applicant may, within 28 days of the decision, appeal the decision to the High Court on a point of law and the decision of the High Court shall be final and conclusive. An application to the Circuit Court and an appeal to the Circuit Court and High Court shall be heard in private.

Where a birth mother has not availed of her entitlement to provide a statement outlining compelling reasons or has informed the Agency that she does not wish to do so and the Agency has determined that there are no compelling reasons not to provide the information or adoption order, or the birth mother has not appealed a determination of the Agency or a decision of the Circuit Court, or the High Court upholds a decision of the Circuit Court, the Agency shall provide the requested information to the applicant. Where the application is for birth certificate information, the Agency shall provide a statement in accordance with *section 40*. Where the application is for a copy of an adoption order made in respect of the applicant, the Agency shall provide the document concerned to the applicant.

This section also provides that where the applicant is an adopted person whose adoption was effected before the date on which this section comes into operation and there is an entry in the register in respect of the birth mother that she is not willing to be contacted by the applicant, the Agency shall provide the applicant with the information or document concerned only where the applicant gives an undertaking, in accordance with *section 41*, not to attempt to contact the birth mother.

Section 27 – Application under *section 23(1)* for forename and surname of birth father

Section 27 provides for an application made in accordance with *section 23(1)* for the provision of the forename and surname of the applicant's birth father, and the Agency is satisfied that the applicant's birth father is deceased, or where the applicant's birth father was consulted under *section 7E* of the Adoption Act 1952 or *section 17(2)* of the Adoption Act 2010 in respect of the adoption, and there is no entry on the register in respect of the applicant's birth father, and the applicant has given an undertaking, in accordance with *section 41*, not to attempt to contact him, then the Agency

shall provide the applicant with a written statement in accordance with *section 40*.

Section 28 – Application under *section 23(1)* for forename and surname of birth father: consultation with birth father

Section 28 provides for the procedure to consult with the birth father, in circumstances where an application is made in accordance with *section 23(1)* for the provision of the birth father's forename and surname, and where there is an entry in the register in respect of the applicant's birth father, or the adoption was effected on or after the date on which this section comes into operation, or the information sought is, or appears to the Agency to be, contained in a relevant record held by the Agency or Authority. Where there is no entry in the register in respect of the applicant's birth father, or the adoption was effected before the commencement of this section, and the information appears to be held in a relevant record, the Agency shall take all reasonable steps, in accordance with guidelines under *section 19*, to locate the birth father for the purposes of this section.

This section provides that the Agency shall send a notification to the applicant's birth father, informing him of the making of the application, the information to which it relates and of the applicant's entitlement under *section 45* to support and guidance. The Agency shall also inform the birth father of his entitlement to provide a statement of compelling reasons as to why the information should not be provided, and that if he does not avail of this entitlement, or informs the Agency that he does not wish to avail of his entitlement, the information shall be provided to the applicant. He shall also be informed of his entitlement under *section 45* to support and guidance. A notification may be sent to him by post in a prepaid registered letter to the address most recently entered on the register in respect of him, or where there is no entry on the register, the address last known to the Agency in respect of him, or if the information applied for appears to be contained in a relevant record and the Agency has succeeded in locating him, the address at which he has been located. A notification shall not be sent to the birth father where the Minister has, under *section 43*, authorised the provision of the information to the applicant.

Where the birth father is of the view that there are compelling reasons why the information should not be provided to the applicant, he may within 12 weeks of the date of the notification provide to the Agency a written statement of his reasons for that view. The Agency shall determine whether there are compelling reasons not to provide the information to the applicant, having considered any statement provided by the birth father and any information otherwise available to it that is relevant to its determination. Where the Agency determines there are compelling reasons not to provide the information to the applicant, it shall make an application to the Circuit Court seeking the approval of the Court of its determination to refuse to provide the requested information to the applicant. An application to the Circuit Court by the Agency shall be accompanied by a statement by the Agency of the reasons for its determination, and a copy of the statement, if any, provided by the birth father. Where the Circuit Court is satisfied that there are compelling reasons not to provide the requested information it shall approve the determination of the Agency, or in any other case, decline to approve the determination. Where the birth father has provided a statement of compelling reasons why the information should not be provided, and the Agency has determined that there are no compelling reasons not to provide the information, the Agency shall notify the birth father of its determination, the effect of *subsections (15) to (17)*, and his entitlement to appeal to the Circuit Court against the determination of the Agency, within 28 days of the date of the notification. The Circuit Court

shall allow the appeal where it is satisfied that there are compelling reasons not to provide the information. Where the Circuit Court has made a decision under *subsection (9) or (12)*, the birth father concerned, the Agency, and the applicant may, within 28 days of the decision, appeal to the High Court on a point of law, and the decision of the High Court shall be final and conclusive. An application to the Circuit Court, and an appeal to the Circuit Court and High Court shall be heard in private.

The information applied for shall be released where a birth father has not availed of his entitlement to provide a statement of compelling reasons, or has informed the Agency that he does not wish to do so, and the Agency has determined that there are no compelling reasons not to provide the information or the birth father is deceased or the Minister has authorised the release of information, or he has not appealed a determination of the Agency or a decision of the Circuit Court, or the High Court upholds a decision of the Circuit Court to release the information. Where the information is to be released, it shall be provided in a statement in accordance with *section 40*.

This section also provides that where the applicant is an adopted person whose adoption was affected before the date on which this section comes into operation and there is an entry in the register in respect of the birth father that he is not willing to be contacted by the applicant, the Agency shall provide the applicant with the birth father's forename and surname only where the applicant gives an undertaking, in accordance with *section 41*, not to attempt to contact the birth father.

This section provides that where the Circuit Court has made a decision that there are compelling reasons to not provide the information sought, or the High Court has upheld a decision of the Circuit Court to not provide the information, the Agency shall notify the applicant of its refusal to provide him or her with the information applied for.

Section 29 – Application under *section 23(2)*

Section 29 provides for an application made in respect of other information relating to the applicant, his or her birth parents or birth relatives, or the circumstances in which he or she became a relevant person, the Agency shall take all reasonable steps, in accordance with guidelines under *section 19*, to locate the birth parent or other person to whom the information relates. Where the Agency is satisfied that the person is deceased, or the Minister has, under *section 43*, authorised the provision of information, the Agency shall provide the applicant with a statement in accordance with *section 40*. Where the birth parent, or other person, has consented, in accordance with *section 42*, to the provision of information, the Agency shall provide the applicant with a statement in accordance with *section 40*.

Section 30 – Adopted person may apply for forename and surname of relevant guardian

Section 30 provides that an adopted person who has attained the age of 18 years may apply to the Agency for the name of a person who is, in relation to him or her, a relevant guardian. Where the Agency is satisfied that the relevant guardian is deceased, or there is no entry in respect of the relevant guardian, and the applicant has given an undertaking, in accordance with *section 41*, not to contact them, then the Agency shall provide a statement in accordance with *section 40*.

Section 31 – Application under *section 30(1)*: consultation with relevant guardian.

Section 31 provides for the procedure to consult with a relevant guardian, in circumstances where an application is made under *section 30(1)*, and where there is an entry in the register in respect of the relevant guardian concerned, or the adoption was effected on or after the date on which this section comes into operation.

This section provides that the Agency shall send a notification to the relevant guardian concerned, informing him or her of the making of the application, and the information to which it relates, and of the applicant's entitlement under *section 45* to support and guidance. The Agency shall also inform the relevant guardian concerned of his or her entitlement to provide a statement of compelling reasons as to why the information should not be provided, and that if he or she does not avail of this entitlement, or informs the Agency that he or she does not wish to avail of his or her entitlement, the information shall be provided to the applicant. The relevant guardian shall also be informed of his or her entitlement under *section 45* to support and guidance. A notification may be sent to the relevant guardian concerned by post in a prepaid registered letter to the address most recently entered on the register in respect of him or her, or where there is no entry on the register, the address last known to the Agency in respect of him or her.

Where the relevant guardian concerned is of the view that there are compelling reasons why the information should not be provided to the applicant, he or she may, within 12 weeks of the date of the notification, provide a written statement to the Agency of his or her reasons for that view. The Agency shall determine whether there are compelling reasons not to provide the information to the applicant, having considered any statement provided by the relevant guardian and any information otherwise available to it that is relevant to its determination. Where the Agency determines that there are compelling reasons, it shall make an application to the Circuit Court seeking the approval of the Court of its determination to refuse to provide the requested information to the applicant. An application to the Circuit Court by the Agency shall be accompanied by a statement by the Agency of the reasons for its determination, and a copy of the statement, if any, provided by the relevant guardian. Where the Circuit Court is satisfied that there are compelling reasons not to provide the information it shall approve the determination of the Agency, or in any other case, decline to approve the determination.

Where the relevant guardian has provided a statement and the Agency has determined that there are no compelling reasons not to provide the information, the Agency shall notify the relevant guardian of its determination, the effect of *subsections (14) to (15)*, and his or her entitlement to appeal to the Circuit Court against the determination of the Agency, within 28 days of the date of the notification. The Circuit Court shall allow the appeal where it is satisfied that there are compelling reasons not to provide the information. Where the Circuit Court has made a decision under *subsection (8) or (11)*, the relevant guardian concerned, the Agency and the applicant for information may, within 28 days of the decision, appeal the decision to the High Court on a point of law and the decision of the High Court shall be final and conclusive. An application to the Circuit Court, and appeals to the Circuit Court and High Court shall be heard in private.

Where the relevant guardian has not availed of his or her entitlement to provide a statement outlining compelling reasons, or has informed the Agency that he or she does not wish to do so, and the Agency has determined

that there are no compelling reasons not to provide the information, or the relevant guardian has not appealed a determination of the Agency or a decision of the Circuit Court, or the High Court upholds a decision of the Circuit Court, the Agency shall provide the applicant with a statement in accordance with *section 40*.

This section also provides that where the applicant is an adopted person whose adoption was affected before the date on which this section comes into operation and there is an entry in the register in respect of the relevant guardian concerned that he or she is not willing to be contacted by the applicant, the Agency shall provide the applicant with the information or document concerned only where the applicant gives an undertaking, in accordance with *section 41*, not to attempt to contact the relevant guardian concerned.

Section 32 – Birth parent of adopted person may apply for information

Section 32 provides that a birth parent of an adopted person over the age of 18 years, or a person who is a relevant guardian in relation to an adopted person over the age of 18 years, may apply to the Agency for the provision to him or her of information held by the Authority or Agency that relates to the adopted person. On receipt of an application, the Agency shall take all reasonable steps, in accordance with guidelines under *section 19*, to locate the adopted person concerned. The Agency shall provide the information applied for where the Minister has, under *section 43*, authorised the provision of the information. Where the adopted person has consented, in accordance with *section 42*, to the provision of the information to the applicant, the Agency shall provide the applicant with the information to which the application relates. Where the information applied for is to be provided, the Agency shall provide the applicant with a statement in accordance with *section 40*.

Section 33 – Birth parent of adopted child may apply for information and items

Section 33 provides for a birth parent, or relevant guardian, of an adopted child to apply to the Agency for the provision of information, such as, information about the child's health, social and educational development and general well-being, or items, such as, letters, photographs or other mementoes relating to the adopted child, or any other information or items an adoptive parent may wish to provide to the Agency for the purpose of transmission to the birth parent, or relevant guardian. On receipt of an application, the Agency shall inform an adoptive parent and request that they provide the Agency with the information or items to which the application relates for the purpose of transmission to the birth parent, or relevant guardian, concerned. The Agency may facilitate the implementation of an arrangement between a birth parent, or relevant guardian, and an adoptive parent relating to the provision of information and items.

This section also provides that an adoptive parent is not obliged to provide information or items to the birth parent, or relevant guardian, nor is the Agency authorised to disclose, without the consent of the adoptive parent, the identity of the adopted child or adoptive parent to the birth parent, or relevant guardian.

Section 34 – Birth Parent of person the subject of incorrect registration or informal care arrangement may apply for information

Section 34 provides that a person who believes that he or she is the birth parent of a person who has attained the age of 18 years, specified person, and who has been the subject of an informal care arrangement or incorrect registration may apply to the Agency for the provision of information as is held by the Agency or Authority that relates to the specified person, and

to the informal care arrangement or incorrect registration concerned. On receipt of an application the Agency shall conduct enquiries for the purpose of establishing whether the specified person was the subject of an informal care arrangement or incorrect registration. The Agency shall inform the applicant, in writing, where it is satisfied that the specified person was not the subject of an informal care arrangement or an incorrect registration, or is unable to obtain the information to which the application relates. Where the Agency is satisfied that the specified person was the subject of an informal care arrangement or an incorrect registration, the Agency shall provide the applicant with a statement in accordance with *section 40(4)*, and shall take all reasonable steps to locate, for the purposes of this section, the requested person concerned. The Agency shall provide the applicant with the information that relates to the specified person where the Minister has, under *section 43*, authorised the provision of the information concerned to the applicant. Where the specified person has consented, in accordance with *section 42*, to the provision of the information to the applicant, the Agency shall provide the information to applicant in a statement in accordance with *section 40*.

Section 35 – Adoptive parent of adopted child may apply for information an items

Section 35 provides for an adoptive parent of an adopted child to apply to the Agency for the provision of information or items such as, information about the child's health, social and educational development and general well-being, or letters, photographs or other mementoes relating to the adopted child, or any other information or items a birth parent may wish to provide to the Agency for the purpose of transmission to the adoptive parent. On receipt of an application, the Agency shall inform a birth parent, or relevant guardian, and request that they provide the Agency with the information or items to which the application relates for the purpose of transmission to the adoptive parent concerned. This section provides that the Agency may facilitate the implementation of an arrangement between an adoptive parent and a birth parent, or relevant guardian, relating to the provision of information and items.

This section also provides that a birth parent, or relevant guardian, is not obliged to provide information or items to the adoptive parent, nor is the Agency authorised to disclose, without the consent of the birth parent, or relevant guardian, the identity of a birth parent, or relevant guardian, to the adoptive parent.

Section 36 – Adoptive parent of adopted child may apply for certain information

Section 36 provides that an adoptive parent may apply to the Agency for the provision of non-identifying information or items held by the Authority or Agency and that relates to his or her adopted child, such as, birth relative information, birth parent information, early life information, medical information, or provided items. Where the application is for information, the Agency shall provide the applicant with a statement in accordance with *section 40*. Where the application is for the provision of provided items, the Agency shall provide those items that are held by it or the Authority.

Section 37 – Application by adoptive parent of adopted child for birth certificate information or adoption order

Section 37 provides that an adoptive parent may apply to the Agency for the provision of birth certificate information or a copy of an adoption order made in respect of the adopted child. On receipt of an application, the Agency shall take all reasonable steps, in accordance with *section 19*, to locate the birth mother of the adopted child concerned. The Agency shall

provide the information applied for, where the Minister has, under *section 43*, authorised the provision of the information. Where the birth mother has consented, in accordance with *section 42*, to the provision of the information to the applicant, the Agency shall provide the applicant with the information to which the application relates. Where the information is to be provided, the Agency shall provide the applicant with a statement in accordance with *section 40*. Where a copy of an adoption order is to be provided, it shall be provided to the applicant.

Section 38 – Application by adoptive parent of adopted child for forename and surname of birth father

Section 38 provides that an adoptive parent may apply to the Agency for the provision of the forename and surname of the birth father of his or her adopted child. On receipt of an application, the Agency shall take all reasonable steps, in accordance with guidelines under *section 19*, to locate the birth father concerned. The Agency shall provide the information applied for, where the Minister has, under *section 43*, authorised the provision of the information. Where the birth father has consented, in accordance with *section 42*, to the provision of the information to the applicant, the Agency shall provide the applicant with the information to which the application relates. Where the information is to be provided, the Agency shall provide the applicant with a statement in accordance with *section 40*. Where a copy of an adoption order is to be provided, it shall be provided to the applicant.

Section 39 – Relative of relevant person or birth parent may apply for information

Section 39 provides that a relative of a relevant person, or relative of a birth parent of a relevant person may apply to the Agency for the provision of information held by the Authority or Agency that relates to the specified person. On receipt of an application, the Agency shall take all reasonable steps to locate the specified person concerned, in accordance with guidelines under *section 19*. The Agency shall provide the information applied for, where the Minister has, under *section 43*, authorised the provision of the information. Where the specified person has consented, in accordance with *section 42*, to the provision of the information to the applicant, the Agency shall provide the applicant with the information to which the application relates. Where the information is to be provided, the Agency shall provide the applicant with a statement in accordance with *section 40*.

Section 40 – Provision of information under Part 5

Section 40 provides for the information to be set out in a written statement, where the information applied for under *Part 5* is to be provided to an applicant.

Where the statement is to be issued under *section 24(1)* or *36(2)* it shall set out all of the information applied for by the applicant concerned that is contained in relevant records held by the Agency and the Authority, shall include a statement as to the nature and likely accuracy of the of the relevant records, and shall not contain information that would identify a birth parent or birth relative of the applicant. This statement shall not include personal data relating to a person relating to a person, other than the applicant, unless the personal data concerned constitutes, in relation to the applicant, birth certificate information, birth relative information, or medical information. Where the information to be provided includes medical information, it shall be provided by a registered medical practitioner, and not in a written statement under this section.

Where the statement is to be issued under *section 25(2)*, *26(15)*, *27*, *28(15)*, *29(2)*, *30(2)*, *31(14)*, *32(3)*, *34(5)*, *37(3)*, *38(3)* or *39(4)*, it shall set out all of the information applied for by the applicant concerned that

is contained in relevant records held by the Agency and the Authority and shall include a statement as to the nature and likely accuracy of the of the relevant records. This statement shall not include personal data relating to a person relating to a person, other than the applicant, unless the personal data concerned constitutes, in relation to the applicant, birth certificate information, birth relative information, or medical information. Where the information to be provided includes medical information, it shall be provided by a registered medical practitioner, and not in a written statement under this section.

Where the statement is to be issued under *section 29(3), 32(4), 34(6), 37(4), 38(4) or 39(5)*, it shall set out all of the information applied for by the applicant concerned that is contained in relevant records held by the Agency and the Authority and to which consent applies, and shall include a statement as to the nature and likely accuracy of the of the relevant records.

Where the statement is to be issued under *section 34(4)(a)*, it shall set out all of the information applied for that relates to the informal care arrangement or incorrect registration that is contained in relevant records held by the Agency and the Authority, and shall include a statement as to the nature and likely accuracy of the of the relevant records. This statement shall not contain information that may identify the specified person concerned. This statement shall not include personal data relating to a person relating to a person, other than the applicant, unless the personal data concerned constitutes, in relation to the applicant, birth relative information, or medical information.

Where the statement is provided under *section 24(1), 29(2), 32(3), 34(5), 36(2) or 39(4)*, it shall not include medical information relating to a person other than the applicant concerned unless the Agency is satisfied that the information constitutes medical information relating to a birth relative, and where the provision of the information has been authorised by the Minister, the statement does not contain information that would identify the person to whom the information on the medical information relates.

This section also provides that the Agency shall issue guidelines in respect of the type of medical information that is, or likely to be, of relevance to the maintenance or management of the physical or mental health of another person, and in preparing these guidelines, the Agency shall consult with such persons, include persons with expertise in the area of hereditary medical conditions, as it considers appropriate.

Section 41 – Undertaking not to contact person

Section 41 provides for the undertaking by an applicant not to contact, or attempt to contact, the birth mother, birth father or relevant guardian concerned, or to make arrangements with any other person for that person to do so. This undertaking shall be in writing and in the form specified by the Minister.

Section 42 – Consent under Part 5

Section 42 provides for the process of obtaining consent, where required under the Act. The Agency shall ensure that the person concerned is made aware of all the information and each document that the Agency proposed to provide to the applicant concerned. A person of whom consent is sought, may consent to the provision of all, or part, of the information concerned, or refuse to consent to the provision of the information concerned. A person who gives consent under this section shall give it in writing in a form as may be specified by the Agency. A person who has given consent may withdraw it at any time before the information is provided to the applicant by the Agency.

Section 43 – Procedure where person cannot be located for the purpose of Part 5

Section 43 provides that where the Agency, despite having made reasonable efforts in accordance with guidelines under *section 19*, has not succeeded in locating a person for the purpose of compliance with the Act, it may request the Minister to provide it with the authorisation to provide the information applied for to the applicant, notwithstanding the fact that consent has not been obtained. The request by the Agency to the Minister shall be accompanied by a declaration outlining the steps taken, in accordance with *Part 4*, to locate the persons of whom consent is required, and stating that, in the opinion of the Agency, further efforts to locate the person are not likely to be successful.

Section 44 – Referral to High Court

Section 44 provides that the Agency may refer any question of law arising from an application for information under this part to the High Court for determination. A hearing under this section may be heard in private.

PART 6

Miscellaneous

Section 45 – Agency to offer support and guidance

Section 45 provides that the Agency shall offer support and guidance to a person who applies under *section 14* to have an entry made in the register in respect of him or her, who requests under *section 20* the facilitation of contact with a specified person, who makes an application for information under *Part 5*, or where an application under *Part 5* is for the provision to the applicant of information relating to the person. The Agency shall publish guidelines, with the approval of the Minister, regarding the provision of support and guidance to applicants under this section.

Section 46 – Offences

Section 46 provides that it is an offence for an information source, to conceal, destroy, mutilate, or falsify a relevant record. It is also an offence for an information source to fail to comply with a direction of the Authority under *section 8(4)* and *section 8(6)*.

This section also provides for penalties for a person guilty of an offence under the Act, and also provides that where an offence is committed by a body corporate with the consent or connivance of any director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, both that person and body corporate are guilty and liable for the offence.

Section 47 – Amendment of section 14 of Adoption Act 2010

Section 47 provides for a consequential amendment to section 14 of the Adoption Act 2010.

Section 48 – Amendment of section 17 of Adoption Act 2010

Section 48 provides for a consequential amendment to section 17(2) of the Adoption Act 2010.

Section 49 – Amendment of section 37 of Adoption Act 2010

Section 49 provides for a consequential amendment to section 37 of the Adoption Act 2010.

Section 50 – Amendment of section 96 of Adoption Act 2010

Section 50 provides for a consequential amendment to section 96 of the Adoption Act 2010.

Section 51 – Amendment of section 8 of Child and Family Agency Act 2013

Section 51 provides for a consequential amendment to section 8 of the Child and Family Agency Act 2013.

Section 52 – Immunity

Section 52 is a standard provision, providing that the State, certain persons and certain bodies, shall not be liable in damages.

Financial Implications

The full year cost to the Exchequer of implementing the Bill is estimated to be €5.4m in 2017 (€4.2m for Agency and €1.2m for Authority) with full year costs of €5.1m in 2018 (€4.7m for Agency and €0.33 for Authority). 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.

An Roinn Leanaí agus Gnóthai Óige
Samhain, 2016.