

Adoption (Information and Tracing) Bill 2016

**Remarks by Dr. Katherine Zappone
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Introduction

I am very pleased to be here at this Conference and I would like to thank the Adoption Authority of Ireland for organising it and for the Authority's continued commitment to promoting the highest standards in adoption.

The range of seminars and conferences organised by the Authority and its active role in disseminating information to the adoption community is vital in ensuring that the Irish standards for delivering adoption services are maintained.

I would like to thank Dr Shannon for his ongoing commitment to the Irish adoption community and his unswerving and hard work aimed at ensuring that adoption is child focussed. In doing that, Dr Shannon not only keeps the child at the centre of the process, but by extension ensures that adoption, both domestic and inter country, operates to the highest and most secure standards.

I am aware that Dr Shannon is very much in demand in an international context and that his expertise in adoption influences not only the Irish landscape but also the legislative and operational systems of many other countries.

I would also like to take this opportunity to thank Patricia Carey and the staff of the Authority for the tremendous service they provide at the coal face of both adoption and information and tracing services.

The complexity of both adoption and information and tracing coupled with sensitiveness of the issues makes for a very distinct set of skills required for service delivery and I am grateful to the staff of the Authority for the work they do on a day to day basis.

The focus of today's conference is the Adoption (Information and Tracing) Bill 2016. The Adoption (Information and Tracing) Bill will give adopted persons, birth parents and relatives a legal right to an information and tracing service.

The proposed legislation provides for structured and regulated access to information and tracing services for those affected by adoption.

It provides for access to information 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.

A key provision of the Bill is that an adopted person aged 18 years or over who was adopted before the proposed legislation comes into operation, will be provided with his/her birth certificate information, as held on record, following a request to Tusla, subject to certain conditions.

An adopted person may request birth relative information, birth parent information such as information about where they are from, hobbies and interests, early life information, medical information, medical information relating to a birth relative and where this information is held on record, it can be provided to an adopted person without consent.

This Bill also seeks to ensure that, where such information is held by the State, individuals who were adopted as Irish children by US couples in the 1940s and in later years will have access to information about their adoption from this country.

Many others who were not formally adopted, but in respect of whom the State may hold 'early life information' will also come within the remit of this Bill and will be entitled to engage with the information and tracing service to be provided by Tusla, The Child and Family Agency.

The Bill also provides that a person whose birth has been incorrectly registered will have an entitlement to avail of information and tracing services under the Bill in the same manner as any other applicant.

However I must acknowledge that, in those circumstances, obtaining accurate and meaningful identifying information may be significantly more difficult.

RECORDS

Historically, adopted persons have looked for a variety of services. These range from access to birth certificates to contact with birth parents or relatives.

No matter what service is requested it is vitally important that the State safeguards the vital historical records required to provide such services.

The State has, over the past number of years, acquired a large volume of records from various adoption agencies and institutions including St. Patrick's Guild, Bessborough, Sean Ross Abbey and Tuam Mother and Babies Home and a large number of smaller agencies that previously were involved in adoption.

These records are currently in the custody of the Child and Family Agency, the Authority, or an Accredited Body. All these records will be transferred into the charge of the Adoption Authority when this Bill is commenced.

The Adoption Authority has a long and successful history in the maintenance of adoption records with care and diligence. This is why we are putting in place a legislative basis to give the Authority responsibility for acquiring adoption records, for assessing and restoring those records where necessary and for ensuring their preservation.

Any assessment of these very important records must be carried out in a professional manner. To this end, I will be bringing forward an amendment to this Bill, at Committee Stage, to bring all adoption records within the remit of the National Archives Act 1986.

This will help to ensure that the record keeping of these documents is in keeping with current professional standards. The National Archives will be consulted and asked to provide assistance to the Adoption Authority.

The Bill also provides that a person seeking information may view his or her original records. We will put appropriate arrangements in place to provide for this. I know from speaking to people who were adopted that the ability to view their original records is very important to them.

In addition, the Bill provides that the Adoption Authority, can in certain circumstances issue a direction to a person who is in possession of a relevant record directing that person to transfer the specified record to the Authority for safeguarding.

My aim is to ensure that those affected by adoption have access to as much information as legally permissible. It is vital that the Authority has the ability to gather all those records and to use the expertise it has developed over many years to maintain and preserve those records to the highest standard.

In addition I intend to ensure that Tusla is provided with most modern facilities to access these records electronically in order to provide the information and tracing service envisaged in the Bill. This is an absolute priority for me.

CURRENT ISSUES

The Bill will be introduced at second stage in Seanad Eireann on May 17th. This is an opportunity for me to introduce the Bill to the Seanad and provide Senators with an outline of the content of the Bill and for the Seanad members to offer initial observations on the Bill.

I am already aware of many of the observations of the Senators, as many of these concerns relate to the core issues that the Bill seeks to address. I am confident that I will be able to work constructively with my colleagues in the Seanad and the Dail to achieve the best legislation possible.

Firstly the issue of whether an undertaking is necessary was raised with me by a number of people. The Bill provides that an undertaking not to contact his or her birth parent is required where a person, who has been adopted prior to the commencement of the legislation, is seeking his or her birth certificate information.

This undertaking is required unless the birth parent is deceased or unless the birth parent has indicated that he or she is seeking to have contact with, or is willing to be contacted by, the adopted person.

I am aware of the deep concern of adopted people regarding this element of the scheme. In many cases there is no objection on the part of a birth parent to the proposed release of birth certificate information.

However, other birth parents, who may feel unable to express their views publicly on this matter, remain opposed to the release of birth certificate information on the grounds of privacy.

In truth, I think it is fair to assume that they are anxious that the provision of information will lead to them being identified.

I have been contacted by a number of social workers who have concerns in this regard and have been anxious to impress upon me their concerns about these people. The majority of them are birth mothers who have already dealt with a difficult and sometimes traumatic period in their lives.

I do not want this Bill to cause further distress to anyone. I do not wish to re-traumatise people.

In order to deal with this I have included measures in the Bill which are intended to minimise this possibility. These include providing that a person who has registered on The Register of Adoption Contact Enquiries will be notified if their child who was adopted applies for birth certificate information.

The Bill provides that where this happens, both parties will be offered support and guidance. I would like to reiterate however that the birth mother would have to be registered to indicate that they would like to be notified if their child applies for birth certificate information.

While I am mindful of the need to safeguard privacy rights in this Bill, I am also conscious that such rights must be considered in the context of the importance of identity rights of adopted persons.

In particular, I acknowledge that the provision in the Bill obliging an adopted person to provide an undertaking before obtaining his or her birth certificate information has not been welcomed by adopted persons. I appreciate and understand the objections raised.

I have given this a lot of thought and am exploring if there are other options which could deal with this issue more sensitively.

I am taking legal advice on another trying to find another mechanism which could help to protect privacy rights for birth parents without necessarily obliging an applicant to give an undertaking. Subject to this advice I hope I will be in a position to bring forward an amendment at Committee Stage.

It is challenging but I can assure you that I will rule nothing out until I have exhausted all possibilities.

In addition, an awareness campaign will be undertaken during the first six months after the Bill's commencement. This will publicise the provisions of the Bill.

The campaign will alert a birth parent to the steps to be taken to ensure that he or she is notified in the event of his or her child that was adopted applying for birth certificate information.

THE REGISTERS

Secondly I would like to address concerns that have been raised in respect of the transfer of adoption information from the current register, the National Adoption Contact Preference Register (NACPR), to the new Register.

The Bill provides that Tusla, the Child and Family Agency, will establish and maintain the new Register of Adoption Contact Enquiries. While the existing National Adoption Contact Preference Register will be discontinued, the Bill provides that all information relating to that Register will be retained by the Authority as an adoption record.

This may be accessed by Tusla to assist in tracing persons. Before the new Register is established, each person whose details are on the NACPR will be contacted advising them of the new Register that is being established by Tusla.

They will be invited to make an application to have their information recorded on the new Register. Where a birth parent has previously entered a preference for 'no contact' on the NACPR, details of this preference will be transferred to the new Register.

The existing Register while it holds rich information is a passive register. When a person enters his or her details on the Register, no action is taken unless there is a match, that is, where, for example, an adopted person enters details on the Register and these details are matched with those of a birth parent who previously registered.

It is known that many of those that entered details on the Register have since received the information sought or have succeeded in making contact.

I acknowledge the work of the Authority in maintaining the NACPR since it was established in 2005, and I am delighted that Tusla has been able to tap into this expertise through the Authority's representation on the Working Group established to develop the new Register. I know that this cooperation will continue and I welcome that.

Consideration was given to providing that all the information currently held on the existing Register would simply be transferred onto the new statutory Register.

However, as the new Register provides for an active tracing service for applicants we decided that we would have a better outcome by contacting those persons currently on the old Register, in order to alert them to the new active Register as mentioned earlier.

A simple transfer of information would not achieve the same outcome and could run the risk of overburdening the information and tracing service from the outset.

ACCREDITED BODIES

Thirdly I am aware that the role of accredited bodies has reduced in the context of the Bill. I wish to state that this was not in any way the initial policy intention in the development of the Bill. I am well aware of the expertise, professionalism and caring ethos of the agencies currently accredited under the Adoption Act 2010 to provide information and tracing services.

However the advice I have received is that the transfer to non-statutory agencies of the information required to provide a service may not be compatible with the protection of rights that the Bill aims to provide. In this regard I intend to bring forward amendments to the Bill at Committee stage to address this matter.

Intercountry Adoptions

I know that it was originally intended that this Bill would include provision for an information and tracing service for people who were subject to an Intercountry Adoption.

As work on the bill progressed, it became obvious that intercountry adoptions needed to be dealt with separately. Many of the issues in the current bill arise because of historical practices.

Intercountry adoptions are relatively modern and deserve their own careful consideration in the context of the Hague Convention on Protection of Children and Co-operation.

It is my intention to deal with Intercountry Adoptions as part of the substantive reform of adoption.

Conclusion

The Bill is the culmination of extensive efforts by the State to develop the middle ground between the constitutional rights of both children who were adopted and birth parents. I want the Bill to address the careful balancing of rights – the right of an adopted person to their identity with the right to privacy of a birth parent.

It would not be right to finish today without speaking about the recent discovery in Tuam. While in some ways many of us were aware of and indeed believed the research done by the wonderful historian Catherine Corless, it was still profoundly shocking to receive confirmation that the remains of hundreds of babies were disposed of in the way they were. In my opinion we need to belatedly give these children the respect they deserved in death and in life. I hope we can do this without delay.

It is not an exaggeration to say that the whole country was affected by the statement from the Commission.

The Commission under the Chairman, Judge Yvonne Murphy, is working tirelessly in establishing the truth about what happened in Mother and Baby Homes throughout the country.

The reality of what happened in Tuam has, I believe sensitised us all to the needs and rights of individuals and families to find out the truth about their pasts and their early lives.

I am working with Tusla to put in place additional resources to enable people to find their records, where they exist, in the shortest possible timeframe. It is my intention that when the Adoption Information and Tracing Bill is enacted they will have access to as much information as possible without undue delay.

I have met with many survivors of these homes. I have met survivors who have managed to get their records and those who have not. I cannot imagine what it is like to read about your own life from a file and to fill in the blanks that have existed all of your life. It must be surreal.

Where we can help people to do this, then I am determined that we will. There will be cases where no records exist. This is the heart-breaking reality. Where we can make records available, we will put the necessary resources in place to make this part of the journey to discovery as painless as possible.