

# Department of Children, Equality, Disability, Integration, and Youth

## Data Protection Impact Assessment (DPIA)

### For

## Birth Information and Tracing Bill, 2022

#### Drafting of the DPIA

The drafting of this Data Protection Impact Assessment is an iterative process and this document will continue to be reviewed and updated depending on the stage of the legislative process being completed. Previous versions of this DPIA have been used for consultation with the Department's Data Protection Officer and the Data Protection Commission.

#### High level description of Project

The intention of the legislation is to provide relevant persons with clear and comprehensive rights of access to information which is central to their identity. This should ensure that those with enduring questions in relation to their origins can access their birth, early life, care and medical information as quickly as possible. The legislation also provides for a number of other important matters such as a robust tracing service, the creation of a statutory contact preference register and the safeguarding of records. All of these provisions require the processing of personal data.

This legislation seeks to align the law on access to origins information with rights espoused by the UN Convention on the Child and the European Charter of Human Rights. The European Court of Human Rights has recognised the right to obtain information in order to discover one's origins and the identity of one's parents as an integral part of identity protected under the right to private and family life enshrined in Article 8 of the Convention of Human Rights. (*Odièvre v. France* [2003] *Gaskin v. the United Kingdom*, [1989]). It is also noted from the judgements that it is a State's right to exercise its own mandate in how that balance of rights between privacy and knowing one's origins should be struck.

This DPIA considers the data protection elements of those aspects of the Bill for which the Department of Children, Equality, Disability, Integration and Youth (DCEDIY) has responsibility. This DPIA does not cover Part 8 of the Bill which relates to amendment of the Civil Registration Act, for which the Department of Social Protection has lead responsibility.

The aspects of the legislation relevant to this DPIA are:

- **Access to Birth Certificate, Information, Records and Provided Items by relevant persons and next of kin.** The categories of information specified in the legislation are (i) Birth Certificates; (ii) Birth Information; (iii) Early Life Information; (iv) Care Information; (v) Provided Items; and (vi) Medical Information.
- **Tracing persons for contact or to provide or request information**
- **Contact Preference Register**
- **Safeguarding of Relevant Records**
- **Miscellaneous Provisions** as follows: (i) Public Information Campaign; (ii) Designation of relevant bodies; (iii) Use of the database and related records of the Mother and Baby Homes Commission of Investigation (MBHCOI); (iv) Child and Family Agency and Authority to offer support and guidance; (v) Offences; (vi) Immunity; (vii) Restriction of rights and obligations under GDPR; (viii) Counselling support for parents.

### **Summary: scope of processing**

#### **Access to Birth Certificate, Information, Records and Provided Items**

The proposed legislation provides for the release of specified information and allows for the processing of:

- Information held by relevant bodies for release to relevant persons;
- Information held on the index under Section 86(1) of the Adoption Act, 2010;
- Items provided to the Child and Family Agency or the Adoption Authority for sharing with relevant persons;
- Special category data in relation to historical medical information;
- Data which is shared between data controllers in certain specified situations.

#### **Tracing persons for contact or to provide or request information**

The proposed legislation provides for a tracing service by the Adoption Authority and the Child and Family Agency and allows for:

- Data sharing between the Adoption Authority and the Child and Family Agency;
- Data sharing between Adoption Authority or the Child and Family Agency and specified third parties;
- Data processing for the purposes of identifying the subject of a trace (i.e. processing records to identify name of birth relative);

- Data processing for the purposes of locating the subject of a trace (i.e. searching records to find an up to date address).

### **Contact Preference Register**

The proposed legislation provides for a Contact Preference Register and the associated processing of:

- Data submitted by an applicant to the Register. This data could include the name, contact details and any other information that could help match the applicant to their genetic family or vice versa;
- Data provided by the applicant as a 'Provided Item' - for example, a letter from a mother;
- Data shared between the Adoption Authority and the Child and Family Agency to allow for the delivery of an information session triggered by a preference for no contact on behalf of a birth parent;
- Data shared between relevant bodies and the Adoption Authority for the purpose of confirming contact preferences.

**Safeguarding of Relevant Records** The proposed legislation provides for the safeguarding of records and allows for the processing of:

- Records transferred to the Adoption Authority by request or agreement;
- The processing of records by the Adoption Authority in order to deem whether they are relevant records or not;
- Copying of relevant records by the Adoption Authority.

### **Miscellaneous Provisions**

The proposed legislation contains a number of miscellaneous provisions which provide for the processing of:

- Data contained within the Mother and Baby Homes Commission of Investigation (MBHCOI) database and related records held by the Agency. This processing can take place upon the application of a person for the release of information or an application for tracing;
- Data contained within the MBHCOI database and related records, transferred to the Department of Children, Equality, Disability, Integration and Youth (DCEDIY) on the dissolution of the Commission, for the purposes of applications for release of information where the Department is designated as a relevant body;
- Data for the purposes of the designation of a Relevant Body by the Minister of Children, Equality, Disability, Integration and Youth;
- The scope of the processing is such that restrictions on GDPR rights and obligations specified in section 62 are necessary to ensure that the essence of the provisions on information release are respected and to ensure that that records can be disclosed. (Section 3.1 has detailed information on this)

## **Summary: purposes for which processing will occur**

### **Access to Birth Certificate, Information, Records and Provided Items**

- Processing of data will occur to allow for access by relevant persons and next of kin to specified information.

### **Tracing persons for contact or to provide or request information**

- Processing of data to enable the tracing of persons for the purposes of facilitating contact with consent, and/or sharing of information with consent.

### **Contact Preference Register**

- Processing of data to allow for the creation and maintenance of a Contact Preference Register which includes provision for information and items to be shared on consent;
- Processing of the data on the current register (known as the NACPR), so that it can be transferred to the statutory Contact Preference Register, thereby ensuring that the contact preferences and lodged information of those who utilised the current NACPR can be retained and safeguarded.

### **Safeguarding of Relevant Records**

- Processing of data to allow for the safeguarding of records under the Act, including retaining and maintaining them in their current location and the transfer of records in any form to the Adoption Authority on request or by agreement. This also allows for authorised officers to search for, inspect, and copy records it believes may be relevant records.

### **Miscellaneous**

- Processing of data will occur to allow for: access to the MBHCOI database and related records for the purpose of administering applications for information and tracing; the designation of relevant bodies; the provision of support and guidance by the Child and Family Agency or the Adoption Authority; and the provision of counselling to parents and relevant persons by the Child and Family Agency including the sharing of data between the Authority and the Agency for this purpose.

## **Summary: intended benefits for data subjects, third parties and the organisation**

### **Access to Birth Certificate, Information, Records and Provided Items**

- The proposed legislation provides all relevant persons with clear rights of access to specified information relating to their identity and origins, thereby recognising in law the importance of knowing one's identity. A consultation on restorative recognition identified access to birth and early life information/ personal records as the single biggest issue for survivors of Mother and Baby and County Home Institutions.

### **Tracing persons for contact or to provide or request information**

- The proposed legislation provides the benefit of a tracing service with a robust statutory basis. This allows the Adoption Authority and the Child and Family Agency, at the request of an applicant, to trace persons for the purpose of seeking or sharing information or to facilitate consensual contact. It can support people to obtain important information in relation to their origins and identity, and can also enable contact and reunion where that is the wish of both parties. This could be a particularly important service for people who find

that records don't hold answers to deeply held questions on their identity and origins or to parents who wish to obtain information on their adopted child.

#### **Contact Preference Register**

- The central benefit of the Contact Preference Register is that it provides for people to register a contact preference, including relevant persons, parents, family members, adoptive parents (on behalf of an their adopted child), a person who previously provided care for a relevant person under the definition of 'care information', or a person who was previously the guardian of a relevant person. This contact preference can be registered within an initial three month window during which information cannot be released, or at any time thereafter.
- This recording of a no contact preference is particularly important to respect a parent's right to privacy in the context of the release of their name.
- A further benefit of the Register is that it enables the lodging of information including medical information, thus allowing relevant persons and their genetic family access to important information relating to identity, origins, and family medical history.

#### **Safeguarding of Relevant Records**

- The benefit of this aspect of the proposed legislation is that it ensures the safeguarding of relevant records, thereby preserving origins information which is fundamentally important for the person concerned. It allows for the Minister to designate secondary information sources, and enables the transfer of records to the Adoption Authority.

#### **Miscellaneous**

- The proposed legislation will enable the Child and Family Agency to fully utilise the valuable MBHCOI database and related records for the purposes of information release and tracing. The database should reduce search and retrieval times, thereby enhancing service efficiency to the benefit of the applicant. It also provides a legislative basis for the Department of Children, Equality, Disability, Integration and Youth to process the copy of the database and related records within the archive of the Commission of Investigation into Mother and Baby Homes for the purpose of information release to applicants under the Act, in circumstances where the Department is a relevant body.
- The Child and Family Agency and the Adoption Authority are enabled to provide support and guidance to relevant persons as required or requested, and to provide counselling to parents and relevant persons. There will be necessary processing of data, on consent, in order to provide this support.
- The benefit of the Public Information Campaign is that the public will be made aware of :-
  - the new statutory Contact Preference Register and how to record a contact preference.;
  - that all existing entries on the current register will be transferred to the new statutory register.
  - Information on the specific GDPR rights that can be restricted in order to ensure a full release of information.

<b>Summary: rationale as to why a DPIA is required</b>
<p>This DPIA is required as many of the provisions of the proposed Birth information and Tracing Bill involve the processing of data, including special category data and children’s data.</p> <p>The core objective of this legislation is to provide for the full release of birth certificates and other origins information which contains personal data of the applicant and the data of the parents of an applicant. The DPIA will aid understanding of the parameters, proportionality and necessity of the proposed approach.</p>

Draft for publication

## Step 1a: DPIA Screening Checklist

Does your project involve:	Yes	No
Evaluation or scoring of personal data (including profiling and predicting)		x
Automated decision-making with legal or similar significant effects		x
Systematic monitoring including through a publicly accessible place on a large scale		x
Sensitive data or data of a highly personal nature (including special categories of data and criminal data)	x	
Data processed on a large scale		x
Datasets that have been matched or combined	x	
Data concerning vulnerable individuals (including children)	x	
Innovative use or applying technological or organisational solutions	x	
Data transfers across borders outside the European Union		x
Processing that restricts data subjects from exercising a right	x	
<b>If you have answered 'Yes' to any of the above questions, you must carry out a DPIA.</b>		

## Step 1b: Need for a DPIA

**Explain broadly the business context – what the overall project aims to achieve and what type of processing of personal data it involves. It would be useful to list the categories of personal data and the data subjects affected (although this is provided for further below). You may find it helpful to refer or link to other documents, such as a project proposal. Summarise why you identified the need for a DPIA (this can draw on your answers to the screening questions).**

The Government committed to the introduction of Information and Tracing legislation as a priority in 2021, and the Heads of Bill were developed through extensive engagement with the Office of the Attorney General.

The purpose of the legislation is to recognise the importance of a person knowing their origins by providing a clear right of access for relevant persons to their birth certificate, birth information, early life information, care information and medical information. Related to this, other important objectives of the legislation are to provide for access by next of kin in specified circumstances; to provide for a statutory tracing service for relevant persons and their relatives; to provide for a statutory Contact Preference Register for relevant persons and their relatives; and to provide for the safeguarding of records relevant to a person's right to know his or her origins.

The intention is to ensure a priority focus on timely access for individuals to information on their origins by making records accessible where they are currently held. This approach provides for the immediate safeguarding and accessibility of records while recognising the broader Government

commitment to a central repository of institutional records and the creation of a National Memorial and Records Centre.

Data subjects are persons who are named in historical care records and adoption records, including mother and baby home records, adoption society records and local authority boarding out records.

#### **Relationship between the DPIA and the Project:**

Conducting a Data Protection Impact Assessment (DPIA) will address and help mitigate data protection risks associated with the proposed legislation, which is a requirement given the nature of the data involved and the context of the processing.

#### **Rationale as to why a DPIA is involved:**

This DPIA is required as many of the provisions of the Birth Information and Tracing Bill concern the processing of personal data. The legislation includes in particular:

- The release of personal data on birth certificates and baptismal certificates
- The release of named third parties responsible for the relevant person's care such as the name of the person in charge of a mother and baby home or the name of a person to whom a person was boarded out;
- The release of special category data, including historical medical data;
- The restriction of rights and obligations under GDPR which are necessary to ensure that the legislation can operate and there is no hindrance to the disclosure of information in accordance with the provisions of the legislation.

## **Step 2: Describe the Processing**

### **2.1 Nature of the processing:**

#### **2.1.1 - What are the sources of the data?**

The types of records involved include:

- Historical care records, birth certificates, maternity registers; mother and baby home admission books;
- Correspondence between parents/families and organisations will also feature. In terms of adoptions, the source of the data could be records such as consent to the adoption and records related to the prospective adoptive parents.
- The database held by the Child and Family Agency, compiled by the MBHCOI;
- The database and related records within the MBHCOI archive held by the Department where the latter is designated a relevant body.

The definition of a relevant record in the proposed legislation shows the types of data that are to be safeguarded:

- a) A record in relation to a relevant person that contains birth information, early life information, care information or medical information;



- b) Communications in relation to a relevant person from a birth parent or birth relative which are held by the Child and Family Agency, the Adoption Authority or a Secondary Information Source;
- c) Communications in relation to a birth parent or birth relative from a relevant person which are held by the Child and Family Agency, the Adoption Authority, or a Secondary Information Source;
- d) Records currently held by the Department of Foreign Affairs in relation to the departure from the State of adopted children in the period commencing on 1 January 1940 and ending on 31 December 1979.
- e) Records prescribed by the Minister in accordance with Section 43 of the Bill. This section sets out the parameters of the type of records that can be prescribed.

#### **2.1.2 - Data flows. Will you be sharing data with anyone?**

Data sharing will take place between:

- The Adoption Authority and the GRO, where a relevant person applies for a birth certificate;
- The Adoption Authority and relevant bodies, where a relevant person applies for a birth certificate or birth information;
- The Adoption Authority and the Child and Family Agency, as necessary and in line with their functions under the legislation;
- Secondary information sources and the Adoption Authority where records are identified for transfer.

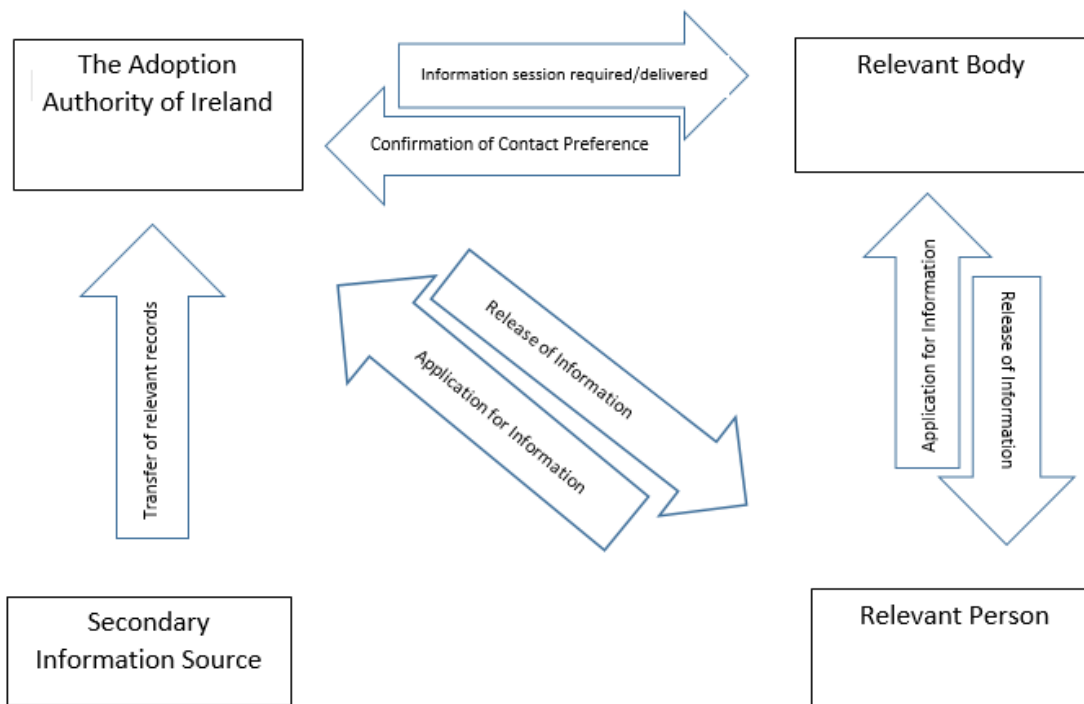
Data sharing agreements will be put in place for all of the above sharing of data.

#### **Data Flow Chart 1**

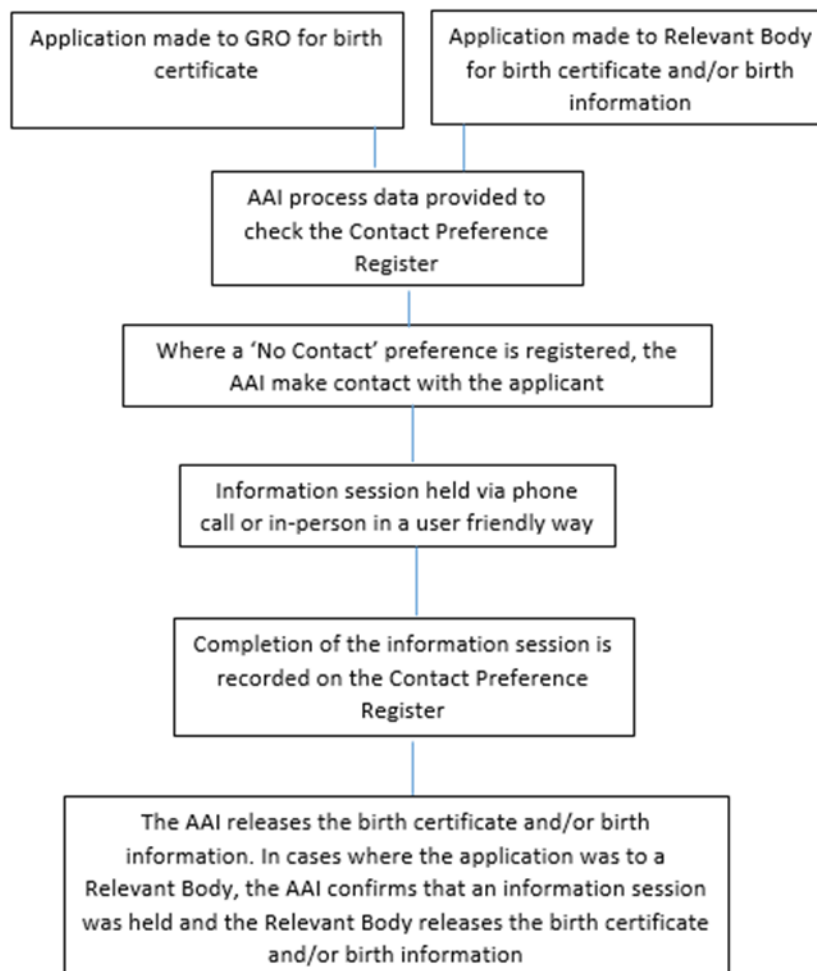
Chart on the next page provides a general overview of data sharing between relevant bodies, a relevant person and a secondary information source.

(In this Chart, the Adoption Authority is separate from 'a relevant body' due to its responsibility to hold, record and share information on contact preferences, notwithstanding that the Adoption Authority is itself prescribed as a relevant body.)

**Chart 1: General overview of data sharing between relevant bodies, relevant persons, and secondary information sources**



**Chart 2: Data processing flow in an application for information in a situation where a preference for no contact has been recorded on the Register (Over 18's)**



### 2.1.3 - What types of processing identified as likely high risk are involved?

The following processing may have a higher risk attached:

1. The release of personal data of a parent that is held on birth certificates;
2. The release of the name of third parties responsible for the care of the applicant as a child, such as the name of the person in charge of a mother and baby home or the name of a person to whom a person was boarded out;
3. The release of medical data of a genetic relative.

- **The release of personal data of a parent that is held on birth certificates**

The risk in this instance relates to the identification of a person whose data is inextricably linked with the data subject's personal data as it is information on a birth certificate. The Department is satisfied

that all information on a birth certificate is the personal data of the person whose birth has been registered, as well as some of the data constituting personal data of the mother and father.

- **The release of named third parties who cared for the relevant person**

The definition of care information includes *‘the name of any person who cared for the relevant person as part of the care arrangement’*. The policy intention is to allow relevant persons access the names of persons who were in loco parentis and responsible for their care as children. For instance, this would be the name of a couple who boarded out a child or the name of a person in charge of a mother and baby home or the part of the home where the child resided.

Persons who boarded out children received a State payment and mother and baby homes were subsidised. The Department is satisfied that no privacy arrangements were entered into with these people whereby their names were to be kept secret.

- **The release of medical data of a genetic relative**

This matter is of clear concern to those impacted who testify that the absence of such information negatively impacts on their ability to manage their health. This provision will be very relevant for adoptions in the future where this information can be recorded clearly for the onward transmission to the adopted person. While non-adopted persons do not have access to such information on their relatives’ health, they will by normal course know of significant medical events in their family’s history.

The proportionality of providing for this in legislation has been carefully considered and the following measures and safeguards are provided for in order to mitigate the risk of a genetic relative being identified

- Only information that is relevant to the maintenance of management of the persons health, i.e. a genetic or hereditary medical condition, will be released;
- The information will be released with no identifying information present;
- The release of the information will be to a GP for onward transmission to the person.

(It may be noted that the proposed legislation will also provide for any medical information, including vaccination information, about the relevant person themselves will be released **to them** directly. The safeguards outlined above only relate to the release of medical data of a genetic relative. In this context, the 1989 Health regulations have been considered (S.I. No. 82/1989 Data Protection (Access Modification) (Health) Regulations)) and deemed not relevant to this primary legislation.

#### **2.1.4 - Are there multiple sets of data processing operations involved?**

The same data sets will also be subject to FOI requests under the Freedom of Information Act 2014, and Subject Access Requests under the Data Protection Act 2018 and the General Data Protection Regulation 2018.

Applications for access under this legislation will be to the body who currently holds the records. Therefore, there are multiple data controllers who would have different storage and access methods.

It is intended that guidelines will be produced to ensure a standard method of processing requests for access to information, to guide data controllers and aid consistency of approach.

## **2.2 Scope of the processing:**

### **2.2.1 - How will you collect, use, store and delete data?**

The operational processing of data will be a matter for the Child and Family Agency, the Adoption Authority and any other relevant bodies or secondary information sources to consider when the legislation has been signed into law.

The overall purpose of the proposed legislation is to enable access to relevant records in their current location, to obligate a secondary information source to safeguard relevant records and to create offences for the mutilation, destruction or falsifying of records.

Records will remain where they are currently held under this legislation. The majority of original records are held by the Adoption Authority and the Child and Family Agency. An outline of the types of records held by them follows. It is not intended to transfer the data to a central archive immediately, though the Adoption Authority will have the power to request the transfer of relevant records from secondary information sources.

Records designated as 'relevant' under the legislation will not be deleted and will be safeguarded.

#### **Records held by the Adoption Authority of Ireland**

The majority of records currently held by the Adoption Authority of Ireland relate to the legal adoption process, the documentation requirements for which have varied over time. These comprise documents recording the adoption agency involved in the adoption of the child, which may include names and signatures of individuals who worked there at that time; records relating to the eligibility and suitability of the prospective adoptive parents such as medical and Garda vetting reports, information about their religion, marriage certificates and statements of income, all including identifying details of the adopters; a copy of the child's birth certificate as well as medical and social work reports relating to the child; records of the mother's name, age, address, profession, religion, family status, medical history, socio-economic background, where she gave birth and consent to the adoption; and any information about the father that was provided at the time. The Adoption Authority also holds the records of some former adoption agencies which have now closed.

#### **Records held by the Child and Family Agency's National Adoption Service**

The Agency's National Adoption Service currently holds the following types of records of relevance to adopted persons, as well as individuals who were 'boarded out' or illegally registered:

- Records of former adoption agencies;
- Records of Mother and Baby Homes;
- Records relating to children who were boarded out;
- Records relating to children adopted from foster care;
- Records relating to a number of former children's institutions;
- 'At-Nurse' records;
- Records of private nursing homes;
- Records of county homes.

These records include varying degrees of information on the adopted or otherwise placed person's early life prior to their placement; information on their mother, sometimes including her medical information, family life and background; and information about the applicant's place of birth and

residence, including mention of individuals managing and working in those places. Some also contain information in relation to fathers.

### **2.2.2 - What types of data subject are involved?**

Any person who appears in the records would be considered data subjects.

The data subject may be a 'relevant person'. This definition will cover:

- an adopted person;
- a person who is or has been the subject of an illegal birth registration;
- a person who has been nursed out or boarded out;
- a person who has reasonable grounds for suspecting that he or she may have been the subject of an illegal birth registration;
- a person who has reasonable grounds for suspecting that he or she may have been nursed out, boarded out;
- A person who resided as a child in an institution listed in schedule 1 of the Birth Information and Tracing legislation.

In addition to this, a data subject may be:

- a parent;
- a genetic relative;
- a person responsible for the early life or care of a relevant person;
- a person involved in the facilitation of a care arrangement;
- A person named on a baptismal certificate

A data subject may be a minor or an adult.

### **2.2.3 - What categories/types of personal data will be used?**

Categories of data will include identifying and non-identifying information, including special category data.

#### **Access to Birth Certificate, Information, Records and Provided Items**

Categories of information include:

#### **(a) Birth Certificates and Birth Information**

The provisions of the Bill provide for the release of the following birth information:

- Forename(s) and surname of child; Sex of child; Date and place of birth; Time of birth
- Forename(s), surname, birth surname, address and occupation of mother; Former surname(s) (if any) of mother; Date of birth of mother; Marital status of mother; Birth surname of mother's mother.
- Forename(s), surname, birth surname, address and occupation of father; Former surname(s) (if any) of father; Date of birth of father; Marital status of father; Birth surname of father's mother.

- Forename(s), surname, qualification, address and signature of informant.
- Date of registration and Signature of registrar.

(b) Early Life Information

Early life information is information that relates to the relevant person in the period following his or her birth and includes—

- (a) the place at which he or she resided and the dates during which he or she resided at that place,
- (b) where applicable, information relating to his or her baptism or any other ceremony of a religious or spiritual nature performed in the period in respect of him or her, which shall include, where available—
  - (i) information on the date and place of the baptism or ceremony,
  - (ii) in the case of his or her baptism—
    - (I) the certificate of baptism, and
    - (II) the entry in a register of baptisms, and
  - (iii) in the case of any other ceremony of a religious or spiritual nature performed on him or her, any equivalent document to a document specified in subparagraph (ii),
- (c) his or her birth weight,
- (d) information on his or her health, physical or emotional development,
- (e) information on any medical treatments, procedures or vaccinations administered to him or her,
- (f) the duration of the period during which his or her mother remained with him or her in the same place of residence, and the dates on which that period commenced and ended,
- (g) information on whether he or she left the place referred to in paragraph (f) with, or separately from, his or her mother,
- (h) information on whether any person, being a parent or other genetic relative of him or her, visited or inquired in relation to him or her, which information includes the degree of relationship of the other person to him or her, but does not include the name of the other person,
- (i) information on whether any person made arrangements for the adoption of the person, whether or not an adoption was effected in respect of him or her, which information includes the name of the person who made the arrangements, and
- (j) where an adoption was effected in respect of him or her, the name of each adoptive parent,

(c) Care Information

Care information is information relating to the persons who provided care as part of a care arrangement. This includes, where applicable:

- (a) the name of any person who was a party to the care arrangement,
- (b) where the person was cared for as a resident of an institution specified in the Schedule—
  - (i) the name of the person in charge of the institution, and
  - (ii) where the person was cared for in a part of the institution, the name of the person in charge of that part, at the time the care was provided,
- (c) the place at which the care was provided,

- (d) the dates on which the care arrangement commenced and ceased, and
- (e) the name of the person who made the care arrangement;.

(d) Provided Items

Provided items are:

- Letters;
- Photographs;
- Mementoes;
- any other documents or objects held by the Child and Family Agency or the Adoption Authority that have been provided, whether to the Agency, the Authority or any other person, by or on behalf of a birth parent or birth relative of a relevant person for the purpose of their being made available to the relevant person in the event that they were to be sought by or on behalf of him or her, or any items provided to the Agency or the Authority by a relevant person with the intention of making them available to a birth relative.

The proposed legislation will provide that a relevant person will be entitled to apply to a relevant body for provided items. On receipt of an application, the relevant body shall release provided items to the applicant.

(e) Medical Information

Medical information means information relating to a relevant person's medical history which will be released directly to them.

It also means the medical history of a genetic relative, insofar as it is relevant to a person, and contained in the relevant historical records and only where it relates to genetic or hereditary conditions and only through a medical practitioner. Identifying information of the genetic relative will not be released.

**Tracing persons for contact or to provide or request information**

Tracing a person requires the processing of their data in order to find their current location.

In cases of intercountry adoption, applications will be forwarded to the central authority of the particular jurisdiction.

**Contact Preference Register**

Under the Contact Preference Register, the following data may be processed:

- (a) Contact preferences;
- (b) Confirmation of an information session held;
- (c) Information lodged for sharing with specific/stated persons;
- (d) Contemporaneous medical information lodged for sharing with specific/stated persons;
- (e) Provided items lodged for sharing with specific/stated persons;



- (f) Information necessary for the person to make an application to the register, eg. First name; surname; name of applicable adoption society if known etc.

### **Safeguarding Relevant Records**

Categories of data that will be processed under this aspect of the proposed legislation fall under the definition of a 'relevant record'. This means records that have been identified for safekeeping by information sources as they contain particular origins information. The records identified as 'relevant' can be transferred to the Adoption Authority with the consent of the Authority.

### **Miscellaneous**

Categories of data which will be processed include:  
The MBHCOI database and related records.

#### **2.2.4 - Frequency / How often will the data be collected?**

Data is already held in records by the data controllers.

Data will be collected through application forms of data subjects applying for a service or for an entry in the register.

#### **2.2.5 - How long will you keep it?**

Records that fall under the definition of a relevant record are to be safeguarded and maintained. Other records, for instance administrative records created as part of a tracing request will only be retained for the statutory time.

#### **2.2.6 - How many individuals are affected?**

The relevant persons definition covers persons who were adopted, the subject of an illegal birth registration, nursed out, boarded out, and informally adopted (pre-1953), resident as a child in a Mother and Baby or County Home Institution, as well as anyone else who suspects they may be a relevant person. In addition to this, the relevant records may hold information on parents, individuals involved in the early life and care of a relevant person or a person who facilitated a care arrangement. Therefore, it is not possible to accurately estimate the amount of individuals affected. Up to 45,000 people have been adopted in Ireland since 1953, while the numbers of mothers and children who passed through the institutions examined by the MBHCOI is in the region of 120,000.

Prospective adoptions will also fall within the scope of this proposed legislation. In 2019, 79 domestic adoptions (including 6 infant adoptions) and 33 intercountry adoptions took place. In 2020 there were 81 domestic adoptions (including 5 infant adoptions) and 21 intercountry adoptions.

Detailed statistics can be found on the Adoption Authority website at this link <https://aai.gov.ie/en/who-we-are/corporate-service/statistics.html>

### **2.2.7 - What geographical area does the project cover?**

The Republic of Ireland in terms of relevant bodies and records held. Applicants and other data subjects may now be resident outside of Ireland or the EU. There will be some data subjects who were born in Ireland and were adopted in another jurisdiction, for example, the USA.

#### **Intercountry adoptions**

While data regarding the adopted child is held by the Adoption Authority, data in relation to the parents are retained by the 'sending' country.

### **2.2.8 - Assets/technology involved with processing the data:**

The Child and Family Agency and the Adoption Authority hold data in various forms including original hard copy form and electronic copies.

Some records, including the MBHCOI database, are electronic and held either as scanned pdf files, excel sheets, or on special databases. The MBCOI databases utilise Lotus Notes software and client/server architecture to facilitate data processing.

## **2.3 Context of the processing:**

### **2.3.1 What is the nature of your relationship with the individuals (whose data is being processed)?**

#### **Primary Information Sources ( The Child and Family Agency and the Adoption Authority)**

It is likely that, in some cases, there will be a prior relationship with the data controller. This is especially true for the Adoption Authority in cases of adoptions since 1953 (when the Adoption Act commenced). The Child and Family Agency will also have relationships with data subjects who underwent foster care placements.

Both agencies will also have pre-existing relationships with data subjects in cases where records relating to previous access requests may have been generated.

#### **Secondary Information Source**

A secondary information source is defined in this proposed legislation as:

- (a) The Department of Children, Equality, Disability, Integration, and Youth;
- (b) The Department of Education;
- (c) The Department of Foreign Affairs and Trade;
- (d) The Department of Health;
- (e) The data controller of the AIRR archive;
- (f) The Health Service Executive (HSE);
- (g) A registered adoption society (within the meaning of section 3 of the Adoption Act 1952);
- (h) An accredited body within the meaning of section 3 of the Act of 2010;

- (i) A person prescribed by the Minister to be a secondary information source.

Some secondary information sources will have prior relationships with the data subjects, as the records were created by them. For example, the Department of Foreign Affairs created the records of children who went to another jurisdiction for adoption.

However, in the case of DCEDIY and the MBHCOI Archive, the archive was not created by the Department. Rather, it was transferred to the Department from the Commission. It is possible, however, that a data subject has corresponded with the Department on various matters or may have been involved in stakeholder consultation.

It may be that there is no prior relationship between the data subject and the data controller.

### **2.3.2 How much control will they have over their data?**

Data subjects will be able to assert their GDPR rights to access and rectification under the GDPR separate to the provisions of this legislation.

In cases where a parent does not wish for any contact with the relevant person, the relevant person participates in an information session prior to the release of the data. This information session is an important mechanism in terms of recognising and balancing the relevant person's right to their identity information with the parent's right to privacy.

### **2.3.3 Would they expect you to use their data in this way?**

The legislation provides for an information campaign to be run by the Adoption Authority of Ireland which will seek to ensure that parents are informed of this legislation and its implications. The intention is that the campaign will also encompass those living overseas by utilising Embassies, advocacy and representative groups, and diaspora newspapers and communication channels in other jurisdictions such as the USA and the UK.

In prospective cases, that take place after the enactment of this legislation, data subjects will be informed of the provisions of the legislation and any implications for their data.

### **2.3.4 Are there prior concerns over this type of processing (e.g. security flaws)?**

The Department is working with the Adoption Authority and the Child and Family Agency to ensure that appropriate IT and resources are in place prior to legislation being enacted.

### **2.3.5 Is the processing novel in any way?**

It is not foreseen that the processing is novel.

**2.3.6 What is the current state of technology in this area?**

All data in Adoption Authority is securely held on government networks due to the fact that the Authority's ICT system is under the auspices of the OGCI. The NACPR is hosted in the Authority's current Document Management System. Currently, only specified staff in the information and tracing unit and some senior managers have access to the NACPR database.

**2.3.7 Are there any current issues of public concern that you should factor in?**

The Government has committed to legislating for access to records and information and recent stakeholder consultation highlighted the fundamental importance of this for survivors of Mother and Baby and County Home Institutions.

**2.3.8 Are you signed up to any approved code of conduct or certification scheme (incl. any awaiting approval)?**

n/a

**2.4 Purposes of the processing:****2.4.1 What do you want to achieve?****Access to Birth Certificate, Information, Records and Provided Items**

- The legislation should ensure that those with enduring questions in relation to their identity and origins can access their birth certificate, birth information, early life, care, and medical information as quickly as possible. The legislation should also ensure access to this information for next of kin in specified circumstances.

**Tracing persons for contact or to provide or request information**

- The legislation should establish a robust tracing service to facilitate people to make contact or share information on consent.

**Contact Preference Register**

- The legislation should establish a Contact Preference Register which will hold contact preferences and provide a mechanism to which information (including contemporaneous medical information) and provided items can be lodged.

**Safeguarding of Relevant Records**

- The legislation should ensure the safeguarding of relevant records deemed necessary in the public interest. It will allow for the Minister to designate a secondary information source to ensure that any relevant records in its possession are safeguarded. It will also provide the Adoption Authority with search powers and the ability to receive or request relevant records from a secondary information source.

### **Miscellaneous**

- The legislation will allow the use for the full MBHCOI database and related records by the Child and Family Agency for the purpose of applications for information release or tracing.

### **2.4.2 What is the intended effect on individuals?**

- That people whose origins have been obscured will be able to access information (if it exists) to allow them to know their origins.
- That children adopted into the future will be able to access their birth certificate from age 16 and will have certainty in relation to this matter.
- That individuals impacted by adoption and other care arrangements can connect with their family members, where all parties consent.
- Persons will be able to access records in relation to their next of kin in specified circumstances.

### **2.4.3 What are the benefits of the processing?**

#### **Access to Birth Certificate, Information, Records and Provided Items**

- It allows all relevant persons access to specified information relating to their identity and information on their origins.
- Access to medical information has been a key theme in the engagement with stakeholders and advocacy groups representing relevant persons; this legislation will allow applicants access to their own medical history as contained within historic files, e.g. vaccine records. The information will be provided directly to the applicant.
- The Bill also provides a mechanism by which a relevant genetic or hereditary conditions listed within files can be conveyed to a relevant person through a medical professional.
- The Bill provides clear rights of access to information for next of kin in specified circumstances.

#### **Tracing persons for contact or to provide or request information**

- It creates a robust statutory tracing service under which people can apply to the Adoption Authority and the Child and Family Agency for the purpose of seeking or sharing information or seeking consensual contact. Currently, the Authority and the Agency are unable to share or request data from key bodies to aid in the trace, which has led to long waiting lists and the inability to complete a trace. This new legislation will enable the Adoption Authority or the Agency to share or request contemporaneous contact information in relation to a trace subject, resulting in a faster service and the potential for more traces to be complete.

#### **Contact Preference Register:**

- It provides for people to register a contact preference. It also enables information to be lodged and shared, thus allowing relevant persons and their family access to important information relating to identity, origins, and family medical history.

#### **Safeguarding of relevant records:**

- It ensures the safeguarding of relevant records. Relevant records can be transferred to the Adoption Authority where the Adoption Authority agrees.

**Miscellaneous:**

- The Child and Family Agency may use all available information held in the MBHCOI database and related records for the purposes of information release and tracing.

**2.5 Describe the Technical and Organisational Measures for securing personal data:****2.5.1 - What security arrangements will be in place to secure the data?**

The Department is working with the Adoption Authority and the Agency to ensure appropriate IT systems are in place.

**2.5.2 - What organisational measures will be in place?**

Data sharing agreements will be in place as necessary, and relevant bodies will be required to draft data privacy statements. Additionally, relevant organisations will be required to draft operational DPIAs.

Organisational measures will also include restricted access to specified staff members.

**Step 3: Assessment of Necessity and Proportionality of Processing****Describe compliance and proportionality measures, in particular:****3.1 - What is your lawful basis for processing?**

The legislation will give the requisite lawful basis to process data by the data controllers and this is in accordance with Article 6 (1) (e) of the GDPR. The Department has worked intensively with the Office of the Attorney General and is satisfied that the balancing of rights within the proposed legislation is necessary and proportionate having regard to the importance of vindicating a person's fundamental right to their identity. The balancing mechanism was designed following in-depth consideration of the domestic and EU legal landscape, and on foot of a reappraisal of this important and sensitive policy area in the context of the recent full implementation and development of GDPR. GDPR has evolved since its recent inception and has provided a policy and legal pathway to recalibrate the conflicting legal rights at play and to resolve them in a constitutionally satisfactory manner.

Furthermore, Article 9 (1) (g) allows processing of special category data to occur where there is substantial public interest that is provided for in law and the principles of data protection have been observed.

Data will be processed in line with responsibilities under this legislation, as well as GDPR, Freedom of Information Act 2014, and the Data Protection Act, 2018.

**Section 62: Restriction of rights and obligations under General Data Protection Regulation**

The Bill provides the legal basis for the restriction of certain specified GDPR rights and obligations. These restrictions are allowable pursuant to Article 23 of the GDPR and have been carefully

considered by the Department following consultation with the DPC. The provisions of the Bill as a whole satisfy the criteria set out in article 23 (2) GDPR.

The rights and obligations are only restricted in very necessary and limited circumstances and in a proportionate way to enable the release of information under the Bill.

The following rights and obligations will be restricted:

- Article 14, obligation that a data controller should provide information to the data subject where personal data have **not** been obtained from the data subject;
- Article 18, the right to restriction of processing;
- Article 21, the right to object.

Article 12 will have an ancillary restriction due to the restrictions of these articles.

#### **Policy rationale for above restrictions**

##### **Article 14, obligation that a data controller should provide information to the data subject where personal data have not been obtained from the data subject;**

It would be near impossible for a data controller to comply with this obligation given the historic nature of the records, the diversity of the records and the different social norms and administrative practices in place at the time they were created. Some records will have been collected by the data controller, for instance the adoption file retained by the Adoption Authority. In other cases, such as mother and baby home records, the Child and Family Agency is now the data controller however the records were created by the religious orders.

##### **Article 18, the right to restriction of processing**

A parent named in the records may wish to restrict processing on grounds that they believe there are inaccuracies. The onus would then lie with the data controller to verify the accuracy or otherwise of the disputed historical record and ensure that any processing of the data is restricted while this verification is taking place. The verification may be wholly impossible or may be extremely difficult and onerous in terms of historic records. During the time that the data controller is carrying out the verifications, the data cannot be processed and this will have implications for an application made by an adopted person. In cases where accuracy cannot be verified or remains contested, it could result a restriction of lengthy and indefinite duration, during which time the rights of the other party (i.e. the applicant) to their origins information cannot be vindicated.

It is important to note that the Right to Rectification will remain open to data subjects who believe there is an inaccuracy on the file. As such, while data subjects cannot seek to restrict the processing of data for an indefinite duration, they can exercise their right to rectification in respect of any data which they believe to be inaccurate.

##### **Article 21, the right to object**

Allowing for the exercise of this right may have significant consequences for the operation of the information service envisaged by the proposed legislation. There are currently a minority of parents named on birth certificates who have refused to provide consent to the release of their names meaning that, in some cases, redacted birth certificates are released to applicants. The core purpose of the legislation is to change this and to enshrine in law the right of a person to know his or her origins and provide for the release of a birth certificate and birth information to adopted people and others in all cases.

By not restricting this Article 21 right, data controllers would be obliged to consider applications of objection to processing on a case by case basis and this would likely create delays and blockages to the release of origins information to an adopted person, contrary to the intention of the proposed legislation. Some people have waited decades for this information and this Article has the potential to make them wait longer or to be denied their origins information.

#### **Other GDPR rights and obligations**

Other rights will remain open to data subjects, including the right to make a subject access request and the right to rectification. The right to rectification is particularly relevant for mothers where they believe there is an inaccuracy on the file.

#### **3.2 - Does the processing actually achieve your purpose?**

Yes, it will allow for access to information for relevant persons.

#### **3.3 - Is there another way to achieve the same outcome?**

No. A legislative basis is required for the processing of the data in question.

#### **3.4 - How will you prevent purpose/function creep?**

Data can only be processed in line with this legislation and other statutory functions and obligations. The legislation provides for guidelines to assist data controllers.

#### **3.5 - How will you ensure data quality and data minimisation?**

Data can only be processed in line with this legislation.  
The categories of information to be release are specified.

#### **3.6 - What information will you give individuals about the processing of their data (e.g. in the context of a Privacy Notice)?**

Information on how data will be processed will form part of the statutory information campaign, as well as the communications and messaging around the introduction of the legislation.  
Additionally, it is expected that relevant bodies will draft data privacy statements and data protection policies and notices.

#### **3.7 - How will you help to support individual rights (e.g. to access/rectify their data)?**

The information campaign will advise data subjects of the implications of this legislation, including rights of access under this legislation.

This legislation does not alter a data subject's right to access and to rectification under GDPR.



**3.8 - What measures do you take to ensure processors comply (e.g. Contract arrangements)?**

It is not envisaged that there will be processors involved.

**3.9 - Are any international transfers envisaged? If so, how do you safeguard such transfers? What mechanisms do you intend to utilise in the event of transfers to third countries? Prior consultation required?**

It will be necessary to accept requests from individuals who live in other jurisdictions who wish to have access to the information and tracing service. For example, an individual who was born in Ireland and adopted in the USA. While it may be necessary to transfer data internationally, such transfer will be in the context of a response to an application from an individual data subject for access to data.

## Step 4: Consult with Stakeholders

**Consider how to consult with relevant stakeholders:****4.1 - Describe when and how you will seek individuals' (data subjects) views or justify why it's not appropriate to do so. How would such consultations improve your understanding of the impact of the processing?**

The Department has engaged extensively with stakeholders, including adopted persons, those affected by illegal birth registration, mothers, organisations that will be relevant bodies and various advocacy groups, and will continue to do so. In addition to this, submissions were invited by the Joint Oireachtas Committee on Children, Equality, Disability, Integration and Youth as part of the pre-legislative scrutiny process on the Heads of Bill.

**4.3 - Do you need to ask your processors to assist?**

No data processors are envisaged with this legislation.

**4.4 - Do you plan to consult information security experts, or any other experts?**

This may be part of the work in ensuring that IT systems have the requisite capacity to allow for the processing of data as envisaged by the legislation.

**4.5 - What other stakeholders should be consulted (who may have a practical knowledge of the operations)? This may include external partners, to whom information might be disclosed.**

The Department is currently chairing an implementation group which has the flexibility to include additional representatives as and when necessary.

**4.6 - How will stakeholder input be sought?**

The implementation group is the ideal forum for views and input to be sought and queries addressed. Any member of the public may write to the Department and their input will be considered. The Minister will continue to update stakeholders by email and will continue to meet with stakeholders when appropriate.

Draft for publication

## Steps 5 and 6: Risk Assessment - Identifying Privacy Risks and Evaluating Privacy Solutions

Steps 5 and 6: Risk Assessment - Identifying Privacy Risks and Evaluating Privacy Solutions									
	Name of Project/Scheme/Service: Birth Information and Tracing Legislation								Risk Register Owner: Eimear Cowan
Risk Type (F – Financial) (S – Strategic) (O – Operational) (R – Reputational) (L – Legal) (Reg – Regulatory)	Risk Description	Consequence	Risk Owner  (Name) (Unit)		Actions / Controls / Mitigations in place (provide details of how you currently manage the risk)	Assessment of Risk			Suggestions on additional Actions / Controls / Mitigations (to further reduce or limit the risk)
						Likelihood (1,2,3,4,5)	Consequence (1,2,3,4,5)	Risk Score	
Legal	Relevant bodies are unable to completely guarantee that the release of mothers', fathers' and carers' names will not cause an adverse impact on those data subjects and the legislation is subject to legal action.				<p>Information campaign to inform mothers, fathers and others of the change in the law.</p> <p>Information session with relevant person is a key mechanism to balance the privacy right</p> <p>Support (including counselling available to mothers and fathers)</p>	1	4	4	<p>The legislation is very specific regarding the personal data that can be released in relation to mothers and fathers and relates to information on the birth certificate, baptismal certificates or medical information that reaches the threshold set out in the legislation. All records on file should be assessed for release.</p> <p>The Department is satisfied that a fair balance has been struck between the right to identity and the right to privacy while achieving</p>

									the aim of releasing full birth certificates.
Reputational Legal Operational	Relevant Bodies cannot guarantee accuracy of information currently held or to be released, as the data was not originally collected by them.	Inaccuracy of data may lead to the release of incorrect data to a relevant person, or situations of incorrect or incomplete traces.	Relevant Body		Relevant Body can provide the applicant with context through a statement issued alongside the records	3	3	9	
Operational	Methods for release of data are not secure.	Data breach	Relevant Body		Operational guidelines, appropriate information management and data protection policies and procedures, and ICT resources in place within Relevant Bodies	1	4	4	
Operational Reputational	Data subject provided with inconsistent access to data by Relevant Bodies due to interpretation of legislation		DCEDIY  Relevant Body		Operational guidelines will be in place to support a consistent understanding and approach	1	2	2	

## Step 7: Document DPIA Actions/Outcomes

Item	Name/date	Notes
<b>Actions to further reduce risk approved by:</b>	Adoption Policy Unit	<p>The Department is currently preparing guidelines which will be issued by the Minister under the proposed legislation and which will include a dedicated chapter on data protection. It is intended that this will support data controllers in understanding their obligations under the Act, including clear guidance as to the circumstances in which any restriction of rights or obligations under the GDPR may be invoked.</p> <p>The guidelines are being developed in consultation with the Adoption Authority and Tusla Child and Family Agency under the auspices of an Implementation Group which has been established to support robust implementation of the legislation.</p>
<b>DPO advice provided:</b>	Data Protection Officer July 2021	To seek further views of DPO as the DPIA is an iterative process
<b>Summary of DPO advice:</b> Constructive feedback received from DPO on version 4		
<b>DPO advice accepted or overruled by:</b>	Fully accepted	If overruled, you must explain your reasons
Consultation with the DPC The Department has received constructive feedback from the DPC through the consultation process and is very grateful for same. The feedback has been taken on board in the drafting of the Bill.  Draft DPIA provided to DPC on 12/07/2021 and a revised version on 28/10/2021.		
<b>This DPIA will be kept under review by:</b>	Adoption Policy Unit, DCEDIY	The DPO should also review ongoing compliance with DPIA