Comments and Requested Amendments to the Adoption and Children Bill.

We would like to thank the Health Committee for accepting our written submission outlining those aspects of the adoption bill that we believe require amendment. We regret that we have only recently become aware of the contents of this bill and respectfully ask that any future adoption legislation be written only after careful consultation with the main stakeholders—adopted people, birth relatives, and adoptive families.

What this submission is about: Our comments focus on one aspect of this bill only—access to information for adopted adults and birth relatives. We make a sharp distinction between access to information and facilitation of contact between relatives. Access to information is a *right*, while contact with relatives should be facilitated but is not a *right*. We support everyone's right, as defined in other legislation, to decide for themselves who they will have contact with. Contact is not the same as access to information, and adoption legislation should not confuse the two.

Why access to information is so important to adopted people: Adopted people are unique in that major identity-altering decisions have been made about them without their consent. Their names, histories, connections to relatives, and life circumstances have been irrevocably severed by a court of law while they were children and incapable of consenting. They have been given new names, families, and identities and are subsequently treated in law (in most but not all cases) as if born into their adoptive family. The records detailing the circumstances and decisions leading to this severance from family of origin are then sealed and hidden away. Currently, an adopted adult is, in practice, unable to receive upon request a copy of those records that would help them understand and process their own identity and history. The information they are entitled to receive is extremely restricted. No other citizen is denied such fundamental information. Every other citizen is automatically permitted to know who their biological relatives are and the circumstances of their birth and early life. While there could be arguments for shielding such information from adopted people while they are children, there is no valid reason to continue to do so once the child becomes an adult. The system of closed adoption that prevents an adopted person from accessing the information in their own files was devised in the last century, at a time when many rights now taken for granted were routinely violated, including the right of single women to raise their own children. We believe it is imperative that the State prevents discriminatory practices contained in previous legislation from carrying over into this new legislation. The bill's first chapter states that "the paramount consideration of the court or adoption agency must be the child's welfare, throughout the life of the child." In that spirit, we ask you to amend some sections of this bill pertaining to the right of access to information for adopted adults.

The bill distinguishes between post-commencement and pre-commencement adoptions in terms of access to information, and we will first address the clauses dealing with post-commencement adoptions.

Post-Commencement Adoptions

Access to one's birth certificate: We believe that adopted adults have the same automatic right as every other citizen to receive a copy of their birth certificate upon request. Unfortunately, this bill does not reflect that right. Clause 59 states that an adopted person may request from an adoption agency the information that would enable them to obtain their birth certificate from the Registrar General. This information consists of their mother's name and their birth name, which when combined with the person's birthdate enables them to apply for their birth certificate. However, Clause 59 also states that the High Court may, if so requested by an adoption agency, make an order that prevents the release of their birth certificate to an adopted person. Therefore, unlike all other citizens, an adopted adult would not have an automatic entitlement to their own birth certificate. We see no reason to diminish what is an adopted person's automatic right by including this restriction. We cannot imagine any possible reason to deny a person access to their own birth certificate that would exceed their right to receive it.

Access to further information: Clause 59 also states that an adopted person is entitled to receive any prescribed information that has been disclosed to their adopters. This information, however, is likely to be extremely limited. To obtain any further information from their files, an adopted person must make a subject access request to the adoption agency. What happens next is described in Clause 60, which instead of describing an adopted person's right of access to their personal data under the Data Protection Act 2018, focuses entirely on the ways in which an adoption agency can refuse to disclose any information at all.

Clause 60 and the hurdles that confront an adopted adult applying for access to the information in their adoption files:

1. "The agency is not required to proceed with the application unless it considers it appropriate to do so.
2. If the agency does proceed with the application it must take all reasonable steps to obtain the views of any person the information is about as to the disclosure of the information about that person.
3. The agency may then disclose the information if it considers it appropriate to do so.
4. In deciding whether it is appropriate to proceed with the application or disclose the information, the agency must consider—

- The welfare of the adopted person
- Any views obtained (from the third parties)
- Any prescribed matters, and all other circumstances of the case."

Our objections to clause 60:

- Firstly, there is no legitimate reason to include sentences 1 and 3 in this bill. These statements downplay the agency's obligation to disclose information to which the applicant is entitled and imply that the agency has the power to subjectively decide to release or withhold information.

- Secondly, there should be no obligation on the agency to seek the consent of the adopted person's birth relatives before disclosing information that is the personal data of the adopted person. The adopted person should be empowered to seek the information contained in their own records without having to disclose to anyone else that they are doing so. Furthermore, whether a third party consents should not be the determining factor in the decision to withhold information. Consent may be sought and considered, but it should not be a requirement for disclosure.

- Thirdly, regarding the welfare of an adopted person, an adoption agency should always assume that it is in the best interest of the adopted adult to comply with their request for information and should never presume that an adoption agency would know better than the adopted adult what is best for their welfare.

- Finally, using vague terms such as "prescribed matters" and "all other circumstances of the case" as reasons to withhold information implies a plethora of possible restrictions against disclosure that do not in fact exist.

Clause 60 should clarify the rights of adopted people: Bearing in mind that although the right of personal data access is not absolute, it can only be restricted in accordance with Article 23 UK GDPR and the requirements of Article 8 of the European Convention on Human Rights. Therefore, Clause 60 should specify that adopted people have the right to access all personal data and that redactions may only be made on a case-by-case basis where strictly necessary and proportionate to prevent harm that has been demonstrated to outweigh the harm of denying identity-related information to the adopted person. Alternative measures that could mitigate harm to the non-requesting person should be considered before deciding to restrict an adopted person's right, encompassed in the right to privacy, to identity and truth regarding their history. Many alternatives, including specialized counselling, could offer better solutions for families than denial of rights and continued secrecy.

<u>Pre-Commencement Adoptions</u>

Why regulation 15(2) is not fit for purpose: Clauses 59 and 60 relate only to post-commencement adoptions. Access to information for all people adopted prior to 2022 will continue to be governed by regulation 15(2) of The Adoption Agencies Regulations (Northern Ireland) 1989, which states:

"Subject to paragraph (3), an adoption agency may provide such access to its case records and the indexes to them and disclose such information in its possession, as it thinks fit—

(a) For the purposes of carrying out its functions as an adoption agency; and
(b) To a person who is authorized in writing by the Department to obtain information for the purposes of research."

What should replace regulation 15(2): Clearly, this regulation makes no mention of any right of access to information for anyone. It simply states that an adoption agency is empowered to disclose information "as it sees fit." Anyone reading this regulation may wrongly assume that an adoption agency is under no obligation to consider the rights of individuals to access information held in adoption agency records. This regulation is not fit for purpose. Rather than allowing it to remain in force, we suggest applying Clause 59 and Clause 60 to all adoptions, not just post-commencement adoptions. The GDPR is now the law for all persons in the UK. The Data Protection Act 2018 does not dis-apply the Adoption Agencies Regulations (Northern Ireland) 1989. Therefore, the Data Protection Act 2018 is the law that must guide the disclosure of information from all adoption files, no matter when the adoption took place. We do not believe it is permissible to discriminate against a group of people based on their adoption status and therefore request that this bill be amended to reflect the fact that DPA 2018 applies to all adopted people and not just those adopted prior to 2022.

What Clause 102 does and does not do: Clause 102 makes provision for the regulation of an intermediary service to provide information and contact tracing.

Sections 1 and 2 address the provision of information and the facilitation of contact between adopted people and relatives. However, there is a major inequality contained in these sections.

- Section 1 provides for both information and contact tracing regulations to be made for adopted people.
- Section 2 provides for contact tracing regulations only for birth relatives. It makes no provision for birth relatives who want to apply for information only, without instigating tracing or contact.

Why Clause 102 is inequitable: Birth relatives should have an equal ability to request information about their adopted relative without being forced to initiate contact and tracing services. Special consideration must be given to mothers whose babies were taken for adoption during the decades of the twentieth century when adoptions orders were made under duress and without informed consent. We should be vigilant that new legislation does not further victimize victims of past abuse by denying them access to information about their children. Birth parents, like their now adult children, should be assisted in accessing information AND contact and tracing services. Birth parents from other periods should also be given the ability to request information about children taken for adoption WITHOUT having to engage in contact tracing exercises. A parent may have had their parental rights severed because they were unable to provide a secure home for their child. This should not deprive them for life of the right to access information about their child.

Once an adopted child becomes an adult, they and their birth parents should be able to receive upon request information held in the adoption file. If an adoption was ordered to protect a child, the files should not continue to be kept secret from family members once the child becomes an adult and no longer requires such protections from the state. When the child becomes an adult, access to information outweighs the need for secrecy. The reality for adopted people and their birth families is that although adoption severs their legal relationships, it does not change the fact that they are related. Access to information about one's biological relatives is of great importance to many people for many reasons. The state should not impose extra restrictions on anyone seeking such information beyond the restrictions and protections already contained in the GDPR. Adoption orders are made to protect vulnerable children. Over the lifetime of an adopted person, the balance between secrecy and access to information shifts, tilting away from secrecy and toward increased access to information as the person grows older. Since "the paramount consideration of the court or adoption agency must be the child's welfare, throughout the life of the child," the law must account for this changing balance by allowing increased access to information over time. Science accepts that knowledge of one's biological past and history is an important part of identity formation. Preventing adopted adults from seeking to fulfill a basic human need is cruel and should no longer be accepted practice.

Other Problematic Aspects of the Bill:

Language in the bill: We would like to point out that the use of the term "illegitimate" in this bill to describe citizens of Northern Ireland born to parents who were not married is offensive. We would like this discriminatory term to be removed, if possible, from the bill.

Counselling: We would like to request some changes in the wording of Clause 62, which pertains to counselling.

Section 1 states that regulations may require adoption agencies to give information about the availability of counselling for adopted people. We suggest substituting the word "must" for "may" to ensure that counselling will be offered as an option in all cases.

Section 4 states that the regulations may require that the counselling be provided by an 'adoption authority' or 'an appropriate voluntary organization.' We would like this section to state that those providing counselling to adopted people and their relatives must have training in adoption-trauma counseling and that signposting should be provided to include a range of therapists beyond people working in adoption agencies and other voluntary agencies.

Links

We include the links below as examples of the growing consensus societally and within government in Northern Ireland and throughout the UK as well as in Ireland that past adoption practices were unjust and led to discrimination against certain groups of citizens. A new adoption law for Northern Ireland should not perpetuate discriminatory adoption practices

soon to be investigated in this State by two major inquiries but should, instead, reflect Northern Ireland's current respect for modern principles of equality and human rights.

The Mother and Baby Institutions, Magdalene Laundries and Workhouses in Northern Ireland Report:
https://www.executiveoffice-ni.gov.uk/articles/truth-recovery-design-panel

In Ireland, the Oireachtas Committee considering that state's new adoption bill recently released its findings and recommendations. These include scrapping the mandatory meeting before information is released to adopted people, since such a requirement would be discriminatory. We ask that Northern Ireland's requirement for such an interview, which is contained in Article 54 of the Adoption Order (Northern Ireland) 1987, which is dis-applied by DPA 2018, be similarly scrapped in the new legislation. As suggested by the Oireachtas Committee, information regarding counselling and privacy could be sent via registered post to adopted people currently constrained by article 54, saving them the humiliation of having to endure an interview before they can access their own birth certificates.
https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_children_equality_disability_integration_and_youth/reports/2021/2021-12-14_report-on-pre-legislative-scrutiny-of-the-birth-information-and-tracing-bill_en.pdf

In England, the Joint Committee on Human Rights inquiry into the adoption of children of unmarried women in England and Wales between 1949 and 1976 is currently investigating adoption injustices rampant during the 20th century.
https://committees.parliament.uk/committee/93/human-rights-joint-committee/news/159804/jchr-examines-historic-treatment-of-unmarried-mothers-in-adoption-inquiry/?fbclid=IwAR2Pu18YONT9R7Gf7Cg-z2Syy8UuW1wu-24OfxcI_2fzi55Xh6pTPrfN3bg

We are most grateful for the opportunity to address the committee regarding provisions of this bill that are of vital interest to us. We are mindful that society's understanding of adoption, which has been informed by evolving scholarship in fields as diverse as psychology and human rights law, as well as by the accounts of those with lived experience of adoption who have recently and with great courage spoken publicly, has changed substantially in recent years. We recognize that it is not easy for legislators to account for such shifts when writing new legislation, but we believe the results will be worth every ounce of effort expended to do so. We welcome any questions you may have for us and would be happy to provide any clarifications or to discuss any possible solutions.

Yours sincerely,
(birthmother and adoptee)
(adoptee)
(adoptee)
(adoptee)