

## **Policy Note: Why Section 102 of the Adoption and Children Act (NI) 2022 Is Not Enough**

### **Purpose**

To explain why implementing Section 102 of the *Adoption and Children Act (Northern Ireland) 2022* is necessary but insufficient to guarantee full and equal access to historical and adoption records, and why a Parity Clause or new Access-to-Records provision is still required.

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### **1. What Section 102 Allows**

Section 102 (which has not yet been commenced) empowers the Department of Health to make regulations for “pre-commencement adoptions.”

Through those regulations, the Department could:

- enable adopted people and their natural parents to obtain adoption-related information;
- establish intermediary and contact services; and
- set out disclosure procedures and privacy safeguards.

If commenced, this could improve access for adoptees by creating a clear statutory route within the health and adoption system.

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### **2. What Section 102 Cannot Do**

Section 102 is limited to the field of formal adoption and to records held by adoption agencies.

It does not:

- cover those who were boarded-out, fostered, or institutionalised without an adoption order;
- create duties for other record-holders such as PRONI, religious orders, hospitals, or voluntary organisations;
- impose criminal penalties for record destruction or concealment;
- provide for cross-border data-sharing with the Republic of Ireland; or
- guarantee equivalence of rights under the Good Friday Agreement or Article 2 of the Windsor Framework.

Without primary legislation, these wider obligations and protections cannot be imposed.

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### **3. Why a Parity Clause (or Access-to-Records Bill) Is Needed**

A Parity Clause, inserted into the current *Mother and Baby Institutions, Magdalene Laundries and Workhouses Inquiry and Redress Bill*, would:

- create a comprehensive statutory right of access for all persons affected by family separation, not only adoptees;
- bind all public, religious and voluntary record-holders to preserve and disclose records;
- require cross-border coordination so survivors have the same access north and south; and
- ensure compliance with Article 8 ECHR and the Good Friday Agreement’s equivalence-of-rights principle.

Together, this would deliver the same legal right that already exists under the Republic's *Birth Information and Tracing Act 2022*.

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#### 4. Recommended Legislative Pathway

Step	Action	Lead Department
1.	<b>Commence Section 102</b> of the <i>Adoption and Children Act 2022</i> and make robust regulations on adoption information.	Department of Health
2.	<b>Insert a Parity / Access-to-Records Clause</b> into the Inquiry & Redress Bill, or introduce a stand-alone Bill to extend rights beyond adoption.	Executive Office (with DoH & DfC)
3.	Develop secondary regulations to operationalise access, penalties, and cross-border data-sharing.	Executive Office & DoH

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#### Summary

Implementing Section 102 is a vital first step, but it cannot by itself deliver parity or fulfil Northern Ireland's human-rights obligations.

A Parity Clause or dedicated Access-to-Records Bill is therefore essential to ensure that every person affected by forced separation or adoption in Northern Ireland enjoys the same right to information as those in the Republic of Ireland.