Adoption Rights Alliance
REGAINING IDENTITIES, HISTORIES AND RIGHTS FOR ADOPTED PEOPLE
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Adoption Rights Alliance Briefing Note on the Children and Family Relationships Bill 2015

11th March 2015

Adoption Rights Alliance (ARA) advocates for equal identity rights for those affected by Ireland's closed, secret, forced adoption system. People conceived by anonymous egg and sperm donation and those adopted as embryos face the same identity issues as adopted people which is why ARA has campaigned on this issue since its foundation in 2009 and since 2003 through our predecessor organisation, AdoptionIreland. Lessons are still being learned from Ireland's past practices of closed, secret, forced adoption and we fear that history may repeat itself. It is for this reason that we are submitting this Briefing Note to the Oireachtas, in the hope that those who are donor conceived can benefit from our experience.

There is much to welcome in the Children and Family Relationships Bill, however we have some serious concerns in the following areas: a) the lack of retrospective rights for those born before the enactment of this legislation b) the lack of information provided while the child is growing up and c) the information sought from the donor at the time of donation is wholly insufficient. We particularly welcome that the 'best interests' principle is to be enshrined in Irish legislation however some aspects of this Bill threaten to undermine that principle.

ARA asks you to consider our concerns and suggested amendments. We urge you as legislators to listen to the voice of those with experience of closed secret adoption, because ignorance will not be an acceptable excuse when donor conceived adults come forward seeking information about their genetic heritage in the future.

Section 9 – Consent of intending mother

In our experience, even the most well-intentioned adoptive parents will sometimes attempt to hide their children's status from them (see also our concerns below regarding the Section 89 of

the 2010 Adoption Act). The amendments we propose in relation to this section are in the best interests of donor conceived children and are intended to encourage openness and avoid secrecy. We are disappointed that the Open Adoption Bill[1] introduced by Anne Ferris TD has not progressed in the year that has passed since it received unanimous support in the Dáil. It is in the same spirit that we put forward the amendments below, so that donor conceived children can be afforded information about their genetic heritage as they grow up.

Subsection (3) (e) currently reads:

(e) that, in the event that a child is born as a result of the DAHR procedure, the intending mother—

(i) consents to the recording on the Register of the information specified in section 31(3)(c) in respect of her,

(ii) consents to the recording on the Register of the information specified in paragraphs (a) and (b) of section 31(3) in respect of the child, and

(iii) understands that the child may, in accordance with section 33, access the information specified in section 31(3)(d) in respect of the donor referred to in paragraph (c)(i) and seek to contact him or her.

Amendment requested (in red):

(iv) understands that the child will be contacted by the Minister upon reaching the age of 18 years to advise her/him of her/his rights under this legislation.[2]

(v) agrees to provide the information outlined in Section 22[3] *about the donor's occupation, hobbies and interests throughout the donor conceived person's childhood.*

[1] http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2014/1814/document1.htm
[2] Including details outlined in the amendments suggested by Adoption Rights Alliance
[3] Including details outlined in the amendments suggested by Adoption Rights Alliance

Section 19 – Declaration by District Court of parentage of child to whom section 18 applies

ARA strongly believes that a *guardian ad litem* should be appointed in all court proceedings for children under the age of 18 years so that the best interests of the children in question are given the strongest possible guarantee.

Subsection 3 currently reads:

> *(3) Where a child to whom the application relates has attained the age of 18 years, an application for a declaration under this section shall be brought on notice to him or her, and he or she shall be joined as a party to the proceedings.*

Requested amendment in red:

> *(i) Where a child to whom the application relates has attained the age of 18 years, an application for a declaration under this section shall be brought on notice to him or her, and he or she shall be joined as a party to the proceedings.*
>
> *(ii) Where a child to whom the application relates has not attained the age of 18 years, a guardian ad litem will be appointed and he or she shall be joined as a party to the proceedings.*

Section 22 – Acquisition by operator of DAHR facility of gamete or embryo

ARA is worried that the level of information about the donor under this section is completely inadequate for donor conceived people to learn about their genetic heritage. The details sought amount to no more than a thumbnail sketch, comparable to the non-identifying information given to Ireland's 100,000 adopted people, which has been roundly rejected as utterly insufficient. We are also disturbed to read commentary by some doctors in media who have argued against the ban on anonymous donations – for this reason, we believe that the strictest possible regulation should be in place to ensure that DAHR operators gather and retain information pertaining to the identities of the children concerned.

Subsection 3 currently reads:

> *(3) The information referred to in subsections (1) and (2), in relation to the donor concerned, is:*
>
> *(a) his or her name;*

(b) his or her date and place of birth;

(c) his or her nationality;

(d) the date on which, and the place at which, he or she provided the gamete;

(e) his or her contact details.

Requested amendments (in red):

(3) In accordance with the 'best interests' principle as set out in Part V of the Guardianship of Infants Act (as amended by this Act), the information referred to in subsections (1) and (2), in relation to the donor concerned, is:

a. *his or her name;*
b. *his or her date and place of birth;*
c. *his or her nationality;*
d. *the date on which, and the place at which, he or she provided the gamete;*
e. *his or her contact details;*
f. *a photograph;*
g. *the contact details of a person who may be contacted for family information in the event of the donor's death;*
h. *his or her occupation;*
i. *his or her education level and what was studied;*
j. *his or her hobbies and interests;*
k. *his or her parents' and grandparents' occupations;*
l. *his or her marital status;*
m. *number of siblings in his or her family;*
n. *their occupations, hobbies and interests;*
o. *whether the donor parent's family is aware that the donor is making a donation;*
p. *whether the donor's family is aware of the existence of any children born as a result of the donated gamete;*
q. *a message from the donor for children who may be conceived;*

Section 24 – Use of gamete or embryo in DAHR procedure

We are concerned that this section appears to allow for anonymous donations from outside the State, which would completely undermine the 'best interests' principle that is enshrined in this legislation.

Subsection (2) (b) (ii) currently reads:

> *(ii) where the embryo is acquired from outside the State, has consented to the use of the embryo in a further DAHR procedure, where that consent is substantially the same as that provided for in section 14.*

Requested amendment (in red):

> *(ii) where the embryo is acquired from outside the State, has consented to the use of the embryo in a further DAHR procedure, where that consent is substantially the same as that provided for in section 14 and where the information about the donor is substantially the same as that provided for in Section 22.*[4]

Section 31 – National Donor-Conceived Person Register

ARA is deeply disappointed that this Bill does not provide for retrospective rights for donor conceived people. These children and adults should not be ignored simply because the State has failed to act in time and this in our opinion creates a two-tier system which discriminates against those who are born prior to the enactment of the legislation. At the very least, a service should be provided to assist those who are affected in establishing their genetic heritage. There are other examples in legislation where retrospective registration has been provided for and this case should be no different.

Requested amendment (in red):

> *(5) In the case of children and adults born as a result of a DAHR procedure that was performed before the date on which this section comes into operation, the Minister shall:*
>
> *(i) permit persons who provided a gamete or embryo that was used in a DAHR procedure that resulted in the birth of the child to register their particulars on the National Donor-Conceived Person Register to assist donor-conceived persons in establishing their genetic identity*

[4] Including details outlined in the amendments suggested by Adoption Rights Alliance

(ii) assist all such donor-conceived persons in establishing their genetic identity

Section 32 – Access to certain information from Register

ARA is concerned that donor conceived people who were born as a result of embryo donation are omitted from this section as it stands and we have suggested amendments below.

The section currently reads:

(1) A donor-conceived child who has attained the age of 18 years, or the parent of a donor-conceived child who has not attained the age of 18 years may request the Minister to provide him or her with the following information from the Register:

(a) information other than the relevant donor's name, date of birth and contact details, that is recorded on the Register in respect of the relevant donor;

(b) the number of persons who have been born as a result of the use in a DAHR procedure of a gamete donated by the relevant donor, and the sex and year of birth of each of them.

(2) A donor may request the Minister to provide him or her with information from the Register on the number of persons who have been born as a result of the use in a DAHR procedure of a gamete donated by the donor, and the sex and year of birth of each of them.

Requested amendments (in red):

(1) A donor-conceived child who has attained the age of 18 years, or the parent of a donor-conceived child who has not attained the age of 18 years may request the Minister to provide him or her with the following information from the Register:

(a) information other than the relevant donor's name, date of birth and contact details, that is recorded on the Register in respect of the relevant donor;

(b) the number of persons who have been born as a result of the use in a DAHR procedure of a gamete or embryo donated by the relevant donor or donors, and the sex and year of birth of each of them.

(2) A donor may request the Minister to provide him or her with information from the Register on the number of persons who have been born as a result of the use in a DAHR procedure of a gamete or embryo donated by the donor or donors, and the sex and year of birth of each of them.

Section 33 – Information in respect of relevant donor to be provided to donor-conceived child

ARA is concerned about subsection (2)(b) and subsection (3) (copied below). We are seeking clarification on the criteria that will be taken into account and we ask Oireachtas members to assist us in this regard. ARA is strongly opposed to contact vetoes or any similar language which in essence implies that adopted people or donor conceived people are a subversive group from whom natural mothers or donors require protection. Moreover, donors are in a different position to natural mothers, having voluntarily chosen to donate, with full knowledge of the fact that he or she would be contactable in the future. As such there is no need for a contact veto.

(b) the Minister shall, 12 weeks from the date on which the notice is sent, release to the donor-conceived child the information requested, unless the relevant donor makes representations to the Minister setting out why the safety or well-being of the relevant donor or the donor-conceived child, or both, requires that the information not be released.

(3) Where a relevant donor to whom subsection (2) applies makes representations to the Minister in accordance with that subsection, the Minister shall consider those representations and—

(a) if satisfied that sufficient reasons exist to withhold the information concerned from the donor-conceived child, shall refuse the request under subsection (1) and notify the donor-conceived child of the refusal, or

(b) if not so satisfied, shall release the information to the donor-conceived child concerned.

Part 11 - Amendments to Adoption Act 2010

ARA welcomes the stricter regulations that have been in place since 2010 as a result of the Adoption Act of that year. However, we wish to avail of this opportunity to request that the Oireachtas amend that Act at Section 89, by **removing subsection 2** (copied below). Section 25 (5) of the Children and Family Relationships Bill provides for a note on the birth certificates of donor

conceived people and we warmly welcome this provision. If Section 89 (2) of the Adoption Act remains in place, it undermines this positive step forward and is utterly discriminatory against adopted people.

> *89.— (1) The Minister for Social Protection may, following consultation with the Minister, by regulations under this Act, provide for the issue by an tArd-Chláraitheoir, as respects any entry in the Adopted Children Register, of a certificate of such particulars contained in the entry as may be specified in the regulations.*
>
> ***(2) A certificate referred to in subsection (1) may not disclose that the person to whom the certificate relates is an adopted person.***