

Factsheet for the Committee on the Rights of the Child

91st pre-session (September 2022) / Fifth and Sixth Combined Periodic Report, CRC/C/IRL/5-6

1

Creation of identity

Birth registration:

- Registration is a **legal requirement** and a birth may be registered in the office of any Registrar of Births, Marriages and Deaths, regardless of where it took place.¹ A child's birth must be registered no later than three months, but late birth registration is possible (the Chief Registrar shall not register a birth more than 12 months after the date of birth without written consent from the Superintendent Registrar). If both parents are married to each other, either parent can register the birth; if they are not married, both parents must attend the birth registration; parents who marry after their child is born should re-register the birth (*see below*).² Where the parents do not register the birth, or it is not possible for them to do it, some people may also act as qualified informants.³
- The following **information is recorded in the Register of Births**: (i) surname of the child (the surname registered must be the surname of either or both of the parents; for a surname other than the surname of either or both of the parents, an application must be made to the Registrar General or a Superintendent Registrar in writing); (ii) time, date and place of birth of the child; (iii) gender of the child; (iv) personal Public Service Number (PPS Number) of the child (allocated at registration); (v) forename(s) and surname of the child; (vi) forename(s) and surname of the mother; birth surname of the mother / all previous surnames of the mother; her normal occupation; her address at the date of birth; her date of birth; her marital status; her Personal Public Service (PPS) number; birth surname of the mother's mother; (vii) similar information is entered for the father or other parent.⁴

Parentage:

- Where parents are married to each other there is a **presumption in law that the husband is the father of the child** unless the contrary is proved. If parents are **not married to each other, there is no presumption in law as to who is the father of the child**, unless the father's name is on the birth certificate.⁵ Fathers who are not married to the mother of their child and are not named on the birth certificate may need to prove paternity in order to apply for guardianship, custody or access to their child. If a father acknowledges paternity, he can agree to have his name added to the birth certificate. A person can seek an order in the Circuit Court that a certain person is his/her mother or father. This can be done even if the parent is dead.⁶
- **An adopted person is deemed from the date of the adoption to be the child of the adopter(s)** (Status of Children Act, 1987).
- The Status of Children Act, 1987 also provides for **blood tests including DNA testing, where parentage is in dispute**. The Court can make this order of its own volition or a party to the legal proceedings can apply to the Court for such an order. The cost of the tests will have to be paid by one or both parties or whoever the Court directs to bear the cost.⁷
- However, it appears that **adopted people may be subject to differentiated treatment in the Status of Children Act 1987**, as Section 35(1) of the Act states that (a) a person (*other than an adopted person*) born in the State, or (b) any other person (*other than an adopted person*), may apply to the Court for a declaration that a person or persons named in the application are his father and/or mother.

Surrogacy:

- In surrogacy, it is necessary to first **establish whether the child is born to an Irish parent**. Foreign birth certificates or court orders are not necessarily binding in Irish law or upon Irish authorities. The fact that a genetic relationship exists between a commissioning adult and the child does not mean that he or she is automatically the legal parent of the child under Irish law. Under Irish law, the woman who gives birth to the child is the legal mother of the child, even if the ovum was provided by one of the commissioning adults or a donor. This preserves the child's identity in terms of registration of his or her birth circumstances (*e.g.* biological origins of surrogate mother).

To identify the legal father, the surrogate mother's marital status must be determined: if she is married, her husband is presumed by law to be the father. If the commissioning father is the genetic father, it is possible to overcome the presumption of paternity, for the latter to be recognised as the legal parent (and guardian). This requires an application for a declaration of parentage to be made to the Circuit Court. If the surrogate mother is not married and the commissioning father is the genetic father, his paternity may be recognised on receipt of reliable DNA evidence.⁸

Prevention of statelessness:

- There is very **limited data available on the stateless population in Ireland**. The last census in 2016 included an option to record 'no nationality' on the form, whilst the 2021 census was expected to ask about nationality, with an option to answer 'no citizenship'. A 2014 UNHCR paper on statelessness in Ireland concluded that there was an absence of reliable data to estimate the size of the affected population.⁹ As explained by the Ministry of Justice, "the Domestic Residence and Permissions Unit (...) has no residence applications received by Tusla in the past five years, in relation to children where the child was categorised as stateless".¹⁰
- **A child born stateless on the territory may acquire Irish nationality if they are 'not entitled to citizenship of any other country'**, but this excludes children who may be entitled by law but cannot acquire the nationality of one of their parents. The law prevents statelessness in the case of foundlings, adopted children and children born abroad to Irish nationals. However, it is unclear if the provision on foundlings applies to older children and the lack of regulation of all forms of assisted human reproduction (AHR) may have consequences for some children, particularly children of same-sex couples born abroad and if the Irish parent is not a birth parent. Although the provisions are gender neutral and refer to 'parent', there are some possible risks arising in practice due to the lack of comprehensive regulation of all forms of AHR.¹¹ This should be applied in line with international guidelines (Verona Principles), which state that States have an obligation to ensure that a child never remains stateless.
- **Groups at risk of statelessness or who are stateless in Ireland** include migrants, refugees, Romani people, those born in the former USSR, and specific refugee communities with existing stateless populations.¹²
- **There are no specific provisions to protect the right to a nationality of refugee children and they may be at particular risk of falling through the gap in the legal safeguard**. After making an application for international protection, under the *International Protection Act 2015*, a temporary residence card (TRC) should be granted. This card proves that an application for international protection has been made.¹³ All separated children will see a Social Worker on the day of referral and an initial assessment will take place, which considers the possibility of family reunification in Ireland or another country; the possibility of return to country of origin; obtain a PPSN number; DNA testing for reunification, among other features.¹⁴ All non-European Economic Area migrants over the age of 16 are required to register with the Garda National Immigration Bureau/INIS and obtain an Irish Residence Permit. Many children will have been included on their parent(s)' immigration permission letters and can register their residence easily on turning 16 however, there are a cohort of children and young people who are separated from their parents, have newly joined their parents or are dissatisfied with their current stamp on their Irish Residence Permit.¹⁵ In order to get on a path to naturalisation, potential applicants must ordinarily begin by registering their status in Ireland with INIS or the GNIB in order to evidence their legal reckonable residence.¹⁶
- **Stateless persons may apply for travel documents, but Ireland does not have a formal stateless determination procedure**. Indeed, "stateless children born in Ireland may be eligible for citizenship under the Citizenship Acts.



In addition, the Minister may waive two years of the residence condition in the case of stateless persons. There is also an ad hoc procedure available to stateless persons to request residence permission based on their statelessness. However, these procedures are unclear, are not established in law or policy and therefore cannot be relied upon with any degree of certainty".¹⁷

- **Adopted children do not lose their Irish nationality.** A child adopted by at least one Irish national becomes Irish upon the adoption being recognised by the State and there is no age limit.¹⁸
- In surrogacy matters, the child's entitlement to Irish citizenship will be determined in accordance with the *Irish Nationality and Citizenship Act 1956* and the *Passport Act 2008*. It is therefore necessary to establish that the child was born to an Irish parent (i.e. surrogate mother and/or commissioning father) and that all guardians of the child consent to the issuing of a passport.¹⁹ These situations should also take into account cases, in which the child has a genetic link to the intending mother).

Potential considerations:

- ✓ *Whilst the registration of birth includes extensive information about the child and his or her parents, what is being undertaken for this information to recognise and include other potential family relations (including in cases of assisted reproductive technologies, surrogacy and adoption)?*
- ✓ *Whilst the legislation provides for the protection of stateless children, there is little information available. What mechanisms are being implemented to ensure that all stateless children on Irish territory may acquire Irish citizenship and do not remain stateless, which may result in the violation of other rights and a lack of access to services and protection?*
- ✓ *Are there any plans to reform Section 35(1) of the Status of Children Act 1987 so that adopted people are included in the statutory right to a declaration of parentage?*

2

Modification of identity

Re-registration of birth:

- Ireland has established **circumstances and conditions for the re-registration of birth.** A birth can be re-registered if any of the following situations apply: the parents of a child are not married to each other but wish to have the father's details included and these details were not registered initially; the parents of a child marry each other after the birth of the child; the child was conceived before 4 May 2020 as a result of a donor-assisted human reproduction procedure and the mother is recorded as the only legal parent in the Register of Births. The parents can re-register the birth if they wish to register the second intending parent as the other legal parent on the child's birth certificate. A Declaration of Parentage (a court order) will be required from the court stating that the second intending parent is a legal parent.²⁰
- **If the child has been adopted, whether from Ireland or overseas, registration will be processed by the Adoption Authority.** Adopted children's birth certificates are only available from the General Register Office.²¹ In fact, the certificate used by adopted children and adults is not a birth certificate, but rather, an Extract from the Adopted Children's Register. These are public documents.

Conditions for the modification of names and surnames:

- The **child's surname can be changed at the joint request of both parents when re-registering the birth.** Under Section 25 of the *Civil Registration Act 2004*, parents can apply to have their child's forename registered, added or changed.²² However, a birth certificate cannot be amended unless there are valid reasons to do so.²³ Any such change should be registered and any information on original personal data should be duly preserved.

Surrogacy and assisted reproductive technologies:

- Since 4 May 2020, **the details of the parent(s), including the non-biological parent, may be recorded when registering the birth of a donor conceived child** (also known as DAHR). The DAHR procedure must have taken place after 4 May 2020. To complete the registration, the following will be needed: a certificate from the DAHR facility and a statutory declaration, signed by the parent(s). Births of donor-conceived children, where the procedure was performed before 4 May 2020, must first be registered as a non-DAHR birth. After the birth has been registered, a court order naming another person as the parent of the child is required prior to a DAHR re-registration.²⁴ The process of registering the child's birth will vary depending on the date the baby was conceived (not the date the child is born).
- **Both parents must complete and sign the form: the parents are the birth mother of the child and the person named as a parent in the court order.** A different surname may be chosen, which can be either or both surnames of the parents. If both parents do not sign the form, the surname of the child will remain as the surname that has given at the initial registration. A label title on the birth certificate will indicate the relationship of the parents to the child.²⁵
- However, in relation to international surrogacy, it is worth mentioning that the **recently published final report of the Joint Committee on International Surrogacy**²⁶ calls for the surrogate to sign an affidavit following the birth, confirming her consent for the transfer of parentage to the intended parents, and confirming that her right to bodily autonomy was not breached during the surrogacy (Recom. 10). In fact, the Committee clearly states in its Recommendation 1, that "where an international surrogacy arrangement meets the criteria set out in the guidelines recommended by [the] Committee, the intended parents should be able to apply to the courts for a parental order in respect of both parents". The latter shall name both parents as the parents of the child (Recom. 2), but also the surrogate, declaring the severance of any parental relationship (Recom. 3). Following such a parental order, the child may gain Irish citizenship if either parent is an Irish citizen (Recom. 4).
- In the case of international surrogacy arrangements, **the Committee recommends that there should be a genetic link with at least one of the intended parents** (Recommendation 17). Concerns remain as to the identity rights of children conceived via assisted human reproduction.

Past practices in care:

- The **Mother and Baby Homes Commission of Investigation** submitted its final report²⁷ to the Minister for Children, Equality, Disability, Integration and Youth, which was published in 2021. The report investigated the situation and cases of about 56,000 unmarried mothers and about 57,000 children in the mother and baby homes and county homes, although significant concerns have been raised in relation to its limited remit and breaches in the witnesses' statutory rights.²⁸ Amongst the report's recommendations, there are conclusions and recommendations relating to personal information and records.²⁹ The recommendations on records include a variety of types of records, and it must be reminded that birth certificates are public documents and adopted people have a right to their personal data. Given the concerns about the report, it may be difficult for some of these recommendations to be fully implemented.

Potential considerations:

- ✓ *Whilst the modification of identity may indeed occur through re-registration, adoption or assisted reproduction technologies and surrogacy, what is being implemented to ensure that it complies with the child's best interests? Was it being undertaken to ensure that any of the child's parent(s)' data is indeed recorded and duly preserved in DAHR cases and how is information about pre-2020 cases also efficiently preserved?*
- ✓ *When modification is indeed in the child's best interests, what information is registered to ensure that the child's previous identity (biological, other family, early life) is duly recorded and preserved?*
- ✓ *In relation to past practices, what is the country considering implementing to respond to the rights of victims in terms of their access to information and records, in line with the recommendations issued to date?*



3

Falsification of identity

Past practices and potential illegal adoptions:

- In terms of past practices, the Mother and Baby Homes Commission of Investigation only addressed adoption to a limited extent, although it recognises that adoption “played a very minor role in the exit pathways for the children from the homes that were investigated by the Commission. Many foster parents, who engaged in informal adoptions, subsequently adopted the child following the introduction of legal adoption in 1953”. However, “**once legal adoption came into effect in 1953, adoption became the most significant exit pathway for children in mother and baby homes.** There is documentation to support the view that politicians and others considered that adoption would give an ‘illegitimate’ child a better life. The rights of the mother were recognised but greater emphasis was generally placed on the needs of the adoptive parents”. The Commission mentions that it “has received evidence from some mothers who signed forms consenting to adoption because they had no alternative, because of family circumstances and/or insufficient means to support a baby. Some of this cohort of women are of the opinion that their consent was not full, free and informed”.³⁰ Despite the latter and the testimonies of women whose children were wrongfully removed from them, the Commission concluded that there was no evidence of forced adoption.
- In relation to intercountry adoptions, the report suggests that “1,638 children who were resident in the mother and baby homes and county homes under investigation were placed for foreign adoption. The vast majority, 1,427 were placed for adoption in the United States of America. The Adoption Act 1952 did not regulate foreign adoptions”. Furthermore, “**many allegations have been made that large sums of money were given to the institutions and agencies in Ireland that arranged foreign adoptions**”, but “such allegations are impossible to prove and impossible to disprove”. Concerns have been raised as to the insufficient evidence considered by the Commission.³¹
- Including for more recent cases of potential illicit practices, there have been calls to investigate illegal adoptions in Ireland. Indeed, the former Special Rapporteur on the sale and sexual exploitation of children issued and presented a report about Ireland,³² in which she “encourage[d] the Irish Government to further conduct a national examination of all alleged illicit activities undertaken in the field of adoption which would clarify the scope of this issue both historically and in the present”. She noted that “many adoption arrangements both domestically and internationally were made illegally “through the use of falsified documentation or by coercing natural mothers to consent to the adoption of their child against their will”. As late as 2012, there were still cases involving intercountry adoptions to Ireland linked to potential illicit practices, such as the much publicised cases involving several Irish families adopting from Mexico.³³
- On adoption, the ‘Reynolds Report’ focused on past adoption practices and reflected the context as well as issues and concerns.³⁴

Surrogacy and assisted reproductive technologies:

- Mrs. de Boer-Buquicchio (former Special Rapporteur on the sale and sexual exploitation of children) was invited to speak before Ireland’s House of the **Oireachtas’s Joint Committee on International Surrogacy**. She explained the situations where sale of children may occur and **insisted that certainty in legal parentage should not trump all other children’s rights**, including the need to prevent sale and preserve the child’s identity. She stressed the importance of States having robust regulation that does not allow for the transfer of the child, for any remuneration or any other consideration, which would lead to the sale of the child as well as his or her identity.³⁵
- The Joint Committee has now published its **final report, which includes recommendations aimed at preventing potential illicit practices in international surrogacy arrangements**, including the sale of children.³⁶

Potential considerations

- ✓ **While the falsification of identity may be difficult to evidence in past practices, what mechanisms is the country considering and establishing in new legislation being debated to prevent any such falsification?**

- ✓ **What further actions are being considered to respond to potential illicit practices (see also “Restoration of identity” below), in individual cases and collectively?**

4

Preservation of identity and access to origins

Search for origins:

- **The Birth Information and Tracing Act 2022 has recently been approved.** This Act is described as intended to make further and better provision in respect of access by certain persons to information concerning their origins and, for that purpose, to provide for the access by adopted persons and persons who have been the subject of incorrect birth registrations or certain care arrangements to their birth certificates and other information and items relating to them; to provide, where such persons are deceased, for the access in certain circumstances by their children or other next of kin to such information or items; to provide for the making available, by the Adoption Authority of Ireland and the Child and Family Agency, of a service for the tracing of certain persons; to provide for the establishment and maintenance of a register to be known as the Contact Preference Register; to provide for the safeguarding and transfer to the Adoption Authority of Ireland of certain records relating to the birth, adoption and care of certain persons; among other related matters.³⁷
- In particular, the Act provides for **access to birth certificates, birth and other information, including by “qualified persons” to information about relevant parents, and by “qualified relatives”**. Likewise, the Act established a Tracing Service and a Contact Preference Register. It is also worth mentioning that one section of the Act provides for the preservation of relevant records. *For the measures taken to implement this Act, see “Restoration of identity” below.*
- However, in addition to concerns relating to the mandatory nature of counselling sessions prior to accessing one’s own records, other concerns have been raised on the following issues of this Act: the legislation includes elements of inequality and discrimination in law; it may be offensive to adopted people; it still excludes most mothers and relatives; and the way information and records are defined will lead to much data being withheld and data having limited scope (mention of sub-categories rather than full range of identity elements).³⁸

Assisted reproductive technologies:

- The *Children and Family Relationships Act 2015* intends to protect the right to identity of children born as a result of a DAHR procedure by prohibiting anonymous gamete donation and requiring DAHR facilities to retain records of the donor’s identity and to provide this information to the Minister for Health, who is obliged to establish and maintain a National Donor-Conceived Person Register. Non-identifying information may be requested from the register by a parent or by a donor-conceived child under the age of 18. Identifying information may be requested by a donor-conceived child who has attained the age of 18 years. Where identifying information is requested, the Minister is obliged to notify the gamete donor, who has 12 weeks in which to make representations to the Minister setting out why the safety of the relevant donor or the donor-conceived child, or both, requires that the information not be released. The Minister shall consider any such representations, having regard to the right of the donor-conceived child to his or her identity, and make a decision as to whether sufficient reasons exist to withhold the information concerned from the donor-conceived child. The child may appeal to the Circuit Court against any decision to withhold information.³⁹
- The Act can be further criticised for restricting access to identifying information until the age of 18, even though identifying information should be available on request to parents at any point after the child’s birth, so that they can share it with the child if they so wish.⁴⁰ Indeed, the legislation has been criticised by not going far enough to vindicate the rights of donor-conceived children.



Surrogacy:

- The Final Report of the Joint Committee on International Surrogacy was published in July 2022.⁴¹ The debates benefitted from the interventions of a vast number of experts, including former Special Rapporteur on the sale and exploitation of children.⁴² The report is very clear on the need to protect the rights of children conceived through this means, including the right to identity. Indeed, it clearly mentions their right to know their identity, including genetic, gestational and social origins, *i.e.* the identity of their surrogate, intended parents and any gamete donor, whose sperm or egg was used in their conception. In this context, the Committee considered how this information could be stored, potentially through the National Surrogacy Register foreseen in the *Health (Assisted Human Reproduction) Bill 2022*, to be administered by the Assisted Human Reproduction Regulatory Authority. The Committee also believed that this Register could be used for international surrogacy arrangements and that intended parents should be obliged to submit the details of all parties for inclusion on the register. In addition, where a donor gamete has been used, the Committee suggested this should be registered on the National Donor-Conceived Persons Register.⁴³
- With regards to access to information about these children's origins, Recommendation 11 suggests that the above-mentioned Bill shall be amended in order for intended parents to be able to access information stored on the National Surrogacy Register on behalf of the child until he or she reaches the age of 12. When they reach this age, he or she should be entitled to access their information themselves.

Potential considerations:

- ✓ *A number of legal acts are currently being approved or discussed, with a clear impact on the right to identity of children, through the preservation of information about their family relations. What is being done to support all the parties affected and to guide them in exercising this right, without imposing mandatory counselling information sessions about privacy?*
- ✓ *Would the mechanisms mentioned to store and preserve personal information on children's and adults' family relations ensure that the approach to the type of information is not restrictive and ensures access to all information about one's identity?*
- ✓ *What is being considered to ensure that the persons covered by the information and the mechanisms foreseen take due account of the rights of mothers and siblings, with a view to ensuring contact and potential family reunification?*
- ✓ *Does the country foreseen any opportunities to promote openness in surrogacy relationships for children under the age of 12?*

5

Restoration of identity

- Despite the establishment of the Mother and Baby Homes Commission of Investigation between 2015 and 2021 to undertake an exhaustive investigation into past practices, a **number of concerns were raised in relation to the right to have the survivors' identities fully restored.** As raised by the CLANN project and later confirmed by the Irish High Court, survivors who participated in the investigation were treated unlawfully, as they were wrongly denied the right to comment on many draft findings. As part of this investigation. In this context, the CLANN project provided assistance to those who wished to give evidence to the Commission of Investigation by arranging free legal assistance for individuals to make full written statements. Furthermore, as CLANN explains, they are calling for any redress to be extended to all affected, including those who suffered from forced family separation, abuse as an adopted child or institutional abuse, and further inquests must be held into the deaths and disappearances of children and mothers and full access must be given to the Commission archive.⁴⁴ The CLANN project played a crucial role in disseminating the experiences, views and testimonies of survivors by anonymising shared statements, and gathering and disseminating documentary and archival materials, in order to make a public group report. Furthermore, as mentioned above, the Commission's remit remained limited and the model was subject to criticism.⁴⁵

Placement in care and adoption:

- Based on the *Birth Information and Tracing Act 2022*, the Adoption Authority of Ireland has now established the **Contact Preference Register to access birth and early life information and to enable contact between family members affected by adoption.** The Register serves as a way to lodge a contact preference, including a request for privacy. Applicants have the option to share information that could be beneficial to a family member (medical or background information). Applicants to the register can lodge an item (letter, photograph etc.) for a specified person, which will be given to that person if they join or have previously joined the register. As of October 2022, the Register will allow to access information about birth, care and early life where it exists on a file, record or database. It also includes a statutory tracing service, which will allow people to trace family members, seek a reunion, or simply share or seek information. The Adoption Authority will conduct a mandatory information session about privacy with a specified person where a preference of no contact has been registered by their parent (which has been considered offensive by some affected parties). The Adoption Authority will inform the specified person of their parent's right to privacy and convey their decision to have no contact.⁴⁶
- The *Birth Information and Tracing Act 2022* will provide **access to birth certificates, birth information, images, early life information, care information, medical information and provided items for the following people over the age of 16:** 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 they may have been the subject of an incorrect birth registration; a person who has reasonable grounds for suspecting that they may have been nursed out or boarded out; a person who does not fall into any of the above categories but who resided as a child in a Mother and Baby Home Institution or County Home listed in schedule 1 of the General Scheme of the Birth Information and Tracing Act 2022.⁴⁷ Whilst it appears that affected people will be able to get quite a lot of information, the manner in which information, relevant records and relevant people are defined has been considered restrictive by some persons and organisations, as they believe many people will be left behind and many records will be withheld.
- Furthermore, **the following is a list of persons, who can join the Contact Preference Register:** an adopted person (a legally recognised adoption); a person who was nursed/boarded out; a person who may have spent time in a Mother and Baby Home or County Home (this may have been prior to being adopted or placed in a care arrangement and includes mothers and children); a person who may have been illegally adopted (where a birth was illegally registered and no adoption took place); the mother or father of an adopted person (where either parent placed a child for adoption or in a care arrangement); the sister or brother of an adopted person (where a brother or sister has been placed for adoption or in a care arrangement); the grandparent, aunt, uncle or first cousin of an adopted person (where a relative has been placed for adoption or in a care arrangement); the adoptive parent of an adopted child under 18; the adoptive parent of an adopted person/child who is deceased; family friend of an adoptee or mother/father who is deceased.⁴⁸ The list of information available through the register on adoption, early life, care and medical background is available on the website.
- **Concerns** have been raised about the **information sessions** foreseen by the Act during discussions prior to its approval: these, set as mandatory, may be considered to violate the rights of the persons affected, as they could undermine their fundamental right to access their personal data.⁴⁹ Whilst these may be useful to some, they should remain optional rather than mandatory.⁵⁰ Other concerns were also raised as to the foreseen scheme's not full compliance with the rights of persons affected, and the limited scope of the data shared.⁵¹

Potential considerations:

- ✓ *Whilst the mechanism set by the new Act has now been put in place, how will it ensure that children indeed have access to their full identity and that the mechanism in place does safeguard their best interests and all their rights?*
- ✓ *What is the country considering to offer a response to remaining concerns to safeguard survivors' rights in accessing information about their identity?*



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