



## **AN BILLE UM STÁDAS LEANAÍ, 1986 STATUS OF CHILDREN BILL, 1986**

### **EXPLANATORY AND FINANCIAL MEMORANDUM**

#### **INTRODUCTION**

1. The purpose of this Bill is to remove as far as possible provisions in existing law which discriminate against children born outside marriage. The Bill proposes to achieve this purpose mainly by putting children born outside marriage on the same footing, or as nearly so as possible, as those born within marriage in the areas of guardianship, maintenance and property rights, and by setting up a statutory procedure to enable any person to obtain a court declaration as to his parentage. Other matters provided for in the Bill include: the use of blood tests in determining parentage in civil proceedings; presumptions of law and other evidential matters; and registration of the births of children born outside marriage. The Bill follows from the Government's consideration of the Law Reform Commission's Report on Illegitimacy (LRC 4-1982).

#### **FINANCIAL IMPLICATIONS**

2. The proposals in the Bill will not involve any material charge on the Exchequer, and there are no staffing implications for Departments of State, State bodies or local authorities.

3. This Bill does not amend revenue law; any changes that may be necessary in that area arising out of the measures proposed in this Bill would be a matter for separate legislation promoted by the Minister for Finance.

#### **PART I**

##### **PRELIMINARY AND GENERAL**

4. *Section 1* contains the short title of the Bill and provides that the Bill (except for *Part I*, other than *section 2(1)* (definitions)), shall not come into force for a period of six months after its passing. This period may be shortened for all or any Parts of the Bill if the Minister for Justice so orders.

5. *Section 2(1)* defines the terms "marital child" and "non-marital child" for the purposes of the Bill. The term "marital child" includes:

- persons who are legitimate under present law (*paragraph (a)* of definition);
- persons legitimated by the subsequent marriage of their parents (*paragraphs (b)* and *(d)*), including those whose parents were not free to marry at the time of birth etc. (see *section 5*);
- children of certain void and voidable marriages (*paragraph (c)*) (see *section 6*);



—adopted persons (*paragraph (e)*); and

—other persons who are treated in law as being legitimate or legitimated persons (*paragraph (f)*).

The purpose of *paragraph (f)* of the definition is to cater for the possibility that at some future date an individual or a class of persons, not already encompassed by other paragraphs of the definition, may be regarded in law as legitimate or legitimated.

6. The term “non-marital child” is defined as a person who is not a marital child. It is not synonymous with “illegitimate child”.

7. *Section 3* is a declaratory provision. It provides, in order to remove any doubt there may be, that the fact of being born outside marriage is not a bar to Irish citizenship. Thus, a person born abroad outside marriage is an Irish citizen if either of his parents was an Irish citizen at the time of the person's birth.

## PART II

### AMENDMENT OF THE LEGITIMACY ACT, 1931

8. The Legitimacy Act, 1931, renders legitimate certain classes of children whose parents were not married to each other at the time of the birth but who subsequently marry each other. *Section 1(2)* of the Act excludes from legitimation children born to parents who could not lawfully have been married to one another at the time of the birth or at any time within the previous ten months. The repeal of this subsection, by *section 5(1)* of the Bill, will have the effect that the subsequent marriage of the parents of a child born outside marriage who remains unadopted will always render that child legitimate, irrespective of the marital situation of the parents at the time of the birth. *Section 5(2)* makes the change effective from the date of commencement of this Part in the case of persons to whom the section relates but who were hitherto excluded from legitimation.

9. Under present law, the child of a void marriage (whether or not it has been declared void by a court) is illegitimate from birth, and the child of a voidable marriage which has been annulled is also deemed to be illegitimate from birth. The purpose of *section 6* is to insert provisions in the Legitimacy Act, 1931, which would have the effect of deeming children of void marriages to be the legitimate children of their parents in certain circumstances.

10. *Section 1B* being inserted in the 1931 Act provides that, where a voidable marriage has been annulled, any children of the union will continue to be deemed in law to be the legitimate children of their parents. The legitimate status conferred by this provision will, in the case of voidable marriages annulled previously, apply from the commencement of this Part.

11. In the case of other void marriages, *section 1A* being inserted in the 1931 Act provides that the children of such unions shall be deemed to be the legitimate children of their parents if either or both parents reasonably believed at the appropriate time that the marriage was valid. Subsection (3) of the new section sets up a rebuttable presumption that one of the parties did so believe. In the case of children of void marriages born before the commencement of this Part, the legitimate status conferred by this provision will apply from that date.

12. The provisions in *sections 1A(3)* and *1B(2)* reflect the existing



conditions as to the domicile of the father in sections 1(1) and 8 of the 1931 Act.

### PART III

#### GUARDIANSHIP

13. The Guardianship of Infants Act, 1964, provides, at section 6(4), that the mother of an illegitimate child is its sole guardian, and the word "parent", as used in that Act, excludes the father of such a child. The only rights conferred by the 1964 Act specifically on the father of an illegitimate child are that he may apply to court for access to or custody of the child under section 11(4). This Part of the Bill amends the 1964 Act so as to enable the father of a non-marital child to become guardian of the child jointly with the mother on application to the court (*section 11*); makes further changes arising out of this new provision (*sections 8, 10 and 13*); and makes clear the standard of proof of paternity which will apply in proceedings under the Act (*section 9*).

14. *Section 8* replaces the definitions section of the 1964 Act so as to introduce into that Act the terms "marital" and "non-marital" as defined by *section 2(1)* of the Bill and to take account of the fact that the father of a non-marital infant may be appointed guardian under the new section 6A of the 1964 Act being inserted by *section 11*.

15. *Section 9* inserts a new section 3A in the 1964 Act relating to proof of paternity. The new section makes it clear that, where, in guardianship proceedings, the issue arises as to whether a person is the father of a non-marital child, the court may not make any order which imposes any obligation or confers any right on him unless it is proved on the balance of probabilities (the standard of proof applicable generally in civil matters) that he is the father.

16. Section 6(4) of the 1964 Act provides that the mother of an illegitimate infant shall be guardian of the infant. *Section 10* of the Bill replaces this provision with one which declares the mother of a non-marital infant to be the sole guardian of the infant, unless the father has been appointed guardian jointly with her under the new section 6A of the 1964 Act (see *section 11*) and that appointment has not been terminated by the court. The new subsection also takes account of the possibility that the father may (if an order under section 6A is in force at the time of his death) appoint a testamentary guardian; the mother would continue to act jointly with the testamentary guardian or any guardian appointed in his place in accordance with the 1964 Act.

17. *Section 11* inserts a new section 6A in the 1964 Act which will enable the court to appoint the natural father of a non-marital infant to be a guardian of the infant. In determining an application under this section, the court must, under section 3 of the 1964 Act, regard the welfare of the infant as the first and paramount consideration. Under section 8(4) of the 1964 Act, the order appointing the natural father guardian may be revoked. By virtue of section 9 of that Act, the father appointed guardian under this section will be joint guardian with the mother or any other guardian of the infant. Subsection (2) of the new section 6A provides that the appointment of the natural father as guardian shall not affect a prior appointment of a guardian under section 8(1) of the 1964 Act (appointment of guardian where infant has no guardian) unless the court otherwise orders. Subsection (3) provides for a special procedure to be used where the mother consents to the appointment of the father as guardian, and the father is already registered as such on the births register. The details of this



procedure will be set out in rules of court to be made after the Bill is enacted.

18. *Section 12* replaces section 11(4) of the 1964 Act (which confers a right on the father of an illegitimate child to apply for access to or custody of the child) with a provision which confers the same right on the father of a non-marital infant who is not the guardian of the infant.

#### PART IV

##### MAINTENANCE

19. The principal provisions in existing law relating to the maintenance of a child born outside marriage are contained in the Illegitimate Children (Affiliation Orders) Act, 1930, as amended, mainly by the Family Law (Maintenance of Spouses and Children) Act, 1976. That Act enables the mother of an illegitimate child to seek an affiliation order naming a man as putative father of the child and directing the payment of periodical sums for the support of the child. This Part of the Bill repeals the 1930 Act (*section 24*) and replaces it with new provisions being inserted in the 1976 Act, which are similar in effect to the provisions of that Act as they relate to dependent children of a family.

20. At present, under the 1930 Act (*section 3(2)*), an affiliation order may not be granted unless the evidence of the mother has been heard and corroborated. *Section 14* of the Bill provides that, in any application for maintenance (which would include applications for maintenance made under section 11 of the Guardianship of Infants Act, 1964, as well as applications under the 1976 Act as proposed to be amended by this Part) in which the question of the parentage of a child is in issue, the Court should determine that issue on the balance of probabilities. The requirement as to corroboration is being dropped.

21. *Section 15* inserts new definitions in the 1976 Act. By this section, the new term "dependent non-marital child" is defined in relation to a non-marital child's parents in similar fashion to the existing definition of "dependent child of the family" in relation to spouses. The new definition of "lump sum order" and the re-definition of "maintenance order" are required for the purposes of *sections 20* and *17* of the Bill respectively.

22. *Section 16* modifies the wording of section 5(4) of the 1976 Act. The existing provision requires the court, in determining an application for maintenance of a spouse and/or dependent children of a family, to have regard to all the circumstances of the case, and sets out a number of matters which, in particular, are to be taken into account. The revised version modifies the list of matters to be taken into account to include specific reference to dependent non-marital children of either spouse.

23. *Section 17* inserts new sections 5A and 5B into the 1976 Act. Section 5A provides for applications by either parent against the other (subsection (1)) or by a third party against either parent (subsection (2)) for the maintenance of a non-marital child. Section 5A(3) specifies certain matters, analogous to those in section 5(4) of the 1976 Act, which the court must take into consideration in determining applications for maintenance, and section 5A(4) re-states with appropriate modifications the provisions of section 4A(3) of the 1930 Act (inserted by the 1976 Act) relating to applications by third parties, where there is already in force a maintenance order against the parent of a non-marital child.



24. The new section 5B deals with the maintenance of children of void or voidable marriages who are deemed legitimate by virtue of the new provisions at *section 6* of the Bill. At present, since such children are illegitimate, the appropriate maintenance provisions are those in the 1930 Act as amended. Deeming them to be legitimate — and thus marital — children would mean that they would not be covered by either the 1930 Act or the new provision at *section 5A* of the 1976 Act which is intended to replace the 1930 provisions, but for this section. Since their parents are not married to each other, however, they would not, in general, be covered by the existing maintenance provisions of the 1976 Act, which deals with dependent children of the family, defined in that Act in relation to spouses.

25. *Section 18* inserts a new subsection (3A) in relation to dependent non-marital children in *section 6* of the 1976 Act to provide for the discharge of a maintenance order, either by order of the court to the effect that the child has ceased to be dependent or by reason of the fact that the non-marital child has reached the appropriate age-limit.

26. *Section 19* inserts a new *section 8A* in the 1976 Act, in relation to agreements between the parents of a dependent non-marital child, analogous to that at *section 8* of the Act which enables agreements between spouses to be made a rule of court.

27. *Section 20* inserts a new *section 21A* in the 1976 Act to enable the court to make a lump sum order for the payment of up to £500 for birth expenses and £500 for funeral expenses of a dependent child of the family or a dependent non-marital child. This type of order is available at present only in relation to illegitimate children (*sections 3(1)* and *7* of the 1930 Act).

28. *Section 21* amends the jurisdiction provisions (*section 23*, as substituted by *section 12* of the Courts Act, 1981) of the 1976 Act to take account of the new sections being inserted in that Act by the Bill; *section 22* inserts into *section 24* of that Act (payment to be made without deduction of income tax) a reference to the new *section 8A*; and *section 23* effects some amendments in the Defence Act, 1954, consequential on the other provisions of this Part of the Bill.

29. *Section 24* repeals the Illegitimate Children (Affiliation Orders) Act, 1930, and contains some consequential transitional provisions.

## PART V

### PROPERTY RIGHTS

30. This Part puts marital and non-marital children on the same footing for succession purposes (*section 29*), and includes non-marital children in the meaning of expressions such as “child” or “issue” when used in wills, deeds and other dispositions unless the contrary intention appears (*section 26*). Also in this Part are provisions designed to avoid injustice in certain cases where a parent of a non-marital child dies intestate (*section 32*), and to exclude an unworthy father from benefiting from the estate of his deceased non-marital child (*section 35*).

31. *Section 26* deals with the construction of dispositions. At present, words such as “child” or “issue”, when used in wills, deeds and other instruments, are interpreted as referring only to legitimate and legitimated persons and those tracing their relationship through them, unless the contrary intention appears. *Subsection (1)* will have the effect of reversing this rule of construction, and will ensure that, unless the contrary intention appears, any words denoting family



relationships (e.g. "my eldest son", "the grandparents of X") will be interpreted without regard to whether the parents of any person involved are or were married to each other.

32. *Subsection (2)*, as a consequence of *subsection (1)*, provides that certain provisions of section 3 of the Legitimacy Act, 1931 (under which legitimated persons and persons related through legitimated persons are entitled to take any interest in property as if born legitimate) shall not apply in relation to a disposition made after the commencement of this Part, except as respects any interest in relation to which the disposition refers only to persons who are, or whose relationship is deduced through, legitimate persons. Thus, if a disposition is expressed to be "to the children of X", then under *subsection (1)*, X's legitimate, legitimated and illegitimate children are entitled to benefit; and *subsection (2)* will ensure equality of treatment as between legitimated persons and others. If the disposition is expressed to be "to the legitimate children of X", *subsection (1)* is not applicable, but the exception provision in *subsection (2)* will operate to ensure that, as under present law, legitimated children of X will be entitled, as if born legitimate, to benefit under the disposition.

33. *Subsection (3)(a)* provides that this section is without prejudice to section 26 of the Adoption Act, 1952, relating to the property rights of adopted persons. However, *paragraph (b)* will ensure that a reference to a child in a will or other disposition is to be interpreted as including a child adopted subsequent to the making of the will etc. (Under present law (section 26 (2) of the Adoption Act, 1952), a disposition by will "to the children of X" includes X's children adopted at the time the will is made, but excludes those subsequently adopted.) *Subsection (4)* abolishes the rule which renders void a provision in a disposition for the benefit of an illegitimate child not in being when the disposition takes effect.

34. *Subsection (5)* provides that this section will not operate retrospectively to affect dispositions made before the commencement of this Part or to widen the class of person in whose favour an appointment may be made under a special power of appointment in such dispositions. *Subsection (6)* defines "disposition" for the purposes of the section, and provides that a will made before the commencement of this Part shall not be treated as having been made later merely because it was confirmed by codicil after that date.

35. *Section 27(1)* is in protection of personal representatives and trustees, who would otherwise be under onerous, and possibly embarrassing, duties of enquiry to trace possible relatives, born outside marriage, of a deceased person. The right of claimants to follow the property into the hands of any person, other than a person who acquires an interest in good faith for valuable consideration, is, however, preserved by *subsection (2)*.

36. *Section 28* amends the definitions section of the Succession Act, 1965, to introduce into that Act the concepts of "marital child" and "non-marital child" defined in *section 2* of the Bill, and to amend the definition of the term "issue" to accord with the new section 4A of the 1965 Act, being inserted by *section 29*. At present, "issue" in the 1965 Act does not include illegitimate children or other issue related through an illegitimate link (see the judgment of the Supreme Court in *In the goods of William Walker, deceased: Florence O'Brien v. MS and the Attorney General*, [1985] ILRM 86). The new section 4A(1) changes this by providing that relationships shall be deduced for the purposes of the 1965 Act irrespective of the marital status of a person's parents. *Section 4A(2)* sets up a rebuttable presumption that a non-marital child who dies intestate is not survived by his father or by any



person related to him through his father. Section 4A(3) ensures that in any instrument *inter vivos* made, or will coming into operation, after the commencement of this Part of the Bill, references to Statutes of Distribution will be construed so as to take account of the changes made by this section. Section 4A(4) provides that this section is without prejudice to section 26 of the Adoption Act, 1952, relating to the property rights of adopted persons. Section 4A(5) ensures that the provisions of this section will not retrospectively affect any rights under the intestacy of a person who dies before the commencement of this Part.

37. Section 30 extends the Circuit Court's jurisdiction under the 1965 Act to include the matters relating to intestate succession dealt with at sections 32 (application to court in case of injustice) and 35 (exclusion of unworthy father).

38. Section 31 sets up a rebuttable presumption, for the purpose of determining who is entitled to take out probate or letters of administration, that a deceased person was not survived by any relative who is or was a non-marital child or related to him through a non-marital child.

39. Section 32 inserts a new section 67A in the 1965 Act, enabling the court to vary the operation of the normal rules of distribution on intestacy, contained in Part VI of the 1965 Act (as affected by section 29 of the Bill), in certain circumstances where a parent of a non-marital child dies intestate. The court is being empowered to vary the application of the rules of distribution on intestacy (subsection (2)(a)), if it is of the opinion that the applicant made a contribution of a substantial nature to the accumulation of the intestate's estate and that injustice would be caused by applying the normal rules. Application may be made to the court where the intestate is survived by a spouse and at least one non-marital child of the intestate (whether or not there are also marital children), or, where there is no surviving spouse, by at least one marital and one non-marital child of the intestate (subsection (1)). Application may be made by the spouse or any surviving child of the intestate, whether marital or non-marital. The court will also have power to determine what other shares of the intestate's estate are to be reduced, and to what extent, in order to increase the applicant's share (subsection (2)(b)); but an order made may not, in the case of a partial intestacy, affect any dispositions by will (subsection (2)) or the legal right share of a surviving spouse (subsection (5)).

40. Subsection (3) of the new section enables the court, in deciding an application under the section in a case of partial intestacy, to take into account any application that may be made under section 117 of the 1965 Act (provision for children where testator failed to make proper provision) of the 1965 Act, and subsection (4) requires the court to take account of any provision made by the intestate for the applicant, whether by will or otherwise. Subsections (6) to (9) are similar provisions to those relating to applications under section 117.

41. Section 33(a) amends section 117 of the 1965 Act so as to ensure that, in any case where a testator dies after the commencement of this Part, a non-marital child of the testator will have a right to apply under section 117 for proper provision out of the estate, irrespective of whether the will was made before or after the commencement date. Paragraph (b) makes a further amendment in the section to enable the court, in deciding an application under the section in a case of partial intestacy, to take into account any application that may be made under the new section 67A being inserted in the 1965 Act by section 32.

42. Section 34 amends section 120 of the 1965 Act (exclusion of



persons from succession) consequential on the new section 67A being inserted by section 32.

43. Section 35 inserts a new section 120A into the 1965 Act. This would enable a court, on application, to declare that the father of a non-marital child who dies intestate is unworthy to share in the estate to which the deceased died intestate. (This provision will not affect any disposition by will to the father in the case, for instance, that the deceased died partially intestate.) Subsection (1) sets out the criteria to which the court must have regard when determining such an application. Any person may apply who is entitled to share in the intestacy, or who would be entitled if a declaration were made (subsection (5)). The effect of a declaration would be that the father may not share in the intestate estate, and the estate would be distributed as if the father had died before the deceased. Thus, if a non-marital intestate is survived by his mother and father (assuming that the deceased had neither spouse nor issue), they would in the normal case share the estate equally; if a declaration under this section were made, the mother would be entitled to the entire estate. Similarly, if the deceased's mother is dead and he is survived by his father and brothers and sisters (including half-brothers and half-sisters who are the children of his father), the effect of a declaration under this section would be to deny the father the entire estate and to divide it equally between the deceased's brothers and sisters, including those of the half-blood.

## PART VI

### DECLARATIONS OF PARENTAGE

44. This Part establishes a procedure whereby the Circuit Court may make a declaration that a named person is the parent of the applicant. Under present law, where the parentage of a person arises as an issue in proceedings whose primary purpose is not the settling of that issue (e.g. in guardianship or succession proceedings), that issue can be determined in those proceedings for the purposes of those proceedings alone. There is, however, no statutory means whereby a simple declaration as to a person's parentage can be obtained where no other relief is sought; in the case of legitimate and legitimated children, the procedure available under the Legitimacy Declaration Act (Ireland), 1868, achieves much the same purpose, but it is not available to children whose parents are not or have not been married to each other. The procedure provided for by this Part will fill this gap without altering the present position whereby parentage, when it arises as an issue in other proceedings, can be determined in those proceedings.

45. Section 38 confers jurisdiction on the Circuit Court and contains provisions as to venue on the lines of those provided for other family law matters by section 16 of the Courts Act, 1981.

46. Section 39(1) specifies the persons who can avail themselves of the new procedure. In keeping with the policy of the Adoption Acts which secures confidentiality in regard to the natural parents, this procedure will not be available to adopted children. Applications are confined to persons born in the State (subsection (1)(a)) and any other person (subsection (1)(b)) who can show good and proper reasons for applying (subsection (2)). Subsection (3) enables the Court, where an application is made on behalf of a minor, to refuse to hear or refuse to continue hearing the application if it considers that the minor's interests would be harmed thereby. Subsection (4) and (5) provide for the involvement of the Attorney General; this could be necessary, for instance, where the State's interests were likely to be affected or if there were no proper contradictor to the application. Subsection



(6) provides for notice of the proceedings to be given to interested persons and permits their joinder as parties to the proceedings. Under *subsection (7)*, the Court will grant the declaration sought where the fact of parentage is proved on the balance of probabilities. *Subsection (8)* makes the declaration binding on the parties to the proceedings and on any person claiming through the parties; where the Attorney General has been made a party, the declaration is binding on the State.

47. *Section 40* contains some supplementary provisions. In particular, in *subsection (3)*, it provides that no proceedings for a declaration shall affect any final judgment or decree already made by any court of competent jurisdiction; and in *subsection (5)*, it provides that an tArd-Chláraitheoir is to be notified of any declaration made, so that the births register can, if necessary, be amended (see *section 52*).

## PART VII

### BLOOD TESTS IN DETERMINING PARENTAGE IN CIVIL PROCEEDINGS

48. This Part of the Bill puts on a statutory basis the use of blood tests as evidence in questions of parentage arising in civil proceedings. At present, while blood test evidence may be adduced in such proceedings, a difficulty arises if one of the persons concerned refuses to give a blood sample: there is no sanction against the refusal even though it may have the effect of rendering useless as evidence any tests undergone by others. This Part, as well as providing procedures for the obtaining and giving of blood test evidence, provides that, where a person fails to comply with a direction for the use of blood tests, the court may draw whatever inferences it considers proper from the refusal.

49. *Section 42* will enable a court to direct the use of blood tests and the taking of blood samples, either of its own motion or on application by any party to the proceedings. *Section 43 (1)* provides that a blood sample shall not be taken from a person except with his consent. Under *subsection (2)* the consent of a person who is not of full age will be valid if, in the court's view, he is capable of giving or refusing the necessary consent. *Subsection (3)* specifies who can give consent on behalf of a person who has not got the legal capacity to do so himself.

50. *Section 44* specifies the legal requirements for testing blood samples taken under this Part and reporting the results of the tests to the court. Under *subsection (1)*, the parties may decide to have the tests carried out by an appointed person or by another person on whom they agree, and the court will decide in the absence of agreement. The report, which will be in a prescribed form (*subsection (3)*), will, in the normal case, be sufficient for the court to act on without hearing the oral evidence of the person who made it. However, *subsection (4)* will enable supplementary written information to be obtained, which will be treated as forming part of the report, and *subsection (5)* provides for the calling as a witness of the person who made the report, subject to the court's approval and notice to the other parties. *Subsection (6)* enables the Minister for Justice to appoint persons or categories of persons under whose control blood tests may be carried out.

51. *Section 45* provides for the making of regulations by the Minister for Justice for the purpose of giving effect to this Part.

52. *Section 46* sets out the consequence of failure to comply with a direction for the carrying out of blood tests. *Subsection (1)* will enable the court to draw inferences from a refusal to comply with a direction



under this Part. *Subsection (2)* makes special provision for failure to comply with a direction where it arises on an application for a declaration of parentage under *section 39*; the court may in such a case dismiss the application. *Subsection (3)* will enable the court, if it thinks fit, to dismiss the claim of a party entitled to rely on a presumption that a person is legitimate, notwithstanding that the presumption has not been rebutted, if, after allowing time for compliance, that party fails to comply with a blood test direction.

## PART VIII

### PRESUMPTIONS AND EVIDENTIAL PROVISIONS

53. *Section 48* specifies that the standard of proof required to rebut the presumption of legitimacy or illegitimacy shall be the normal standard required in civil proceedings, i.e., the balance of probabilities. At present, the standard is proof beyond reasonable doubt, which is that required to secure a conviction in criminal proceedings.

54. *Section 49* will enable a finding or adjudication of parentage, made incidental to a judgment in civil proceedings for guardianship or maintenance, or for the recovery of contributions to supplementary welfare allowance, to be admitted as evidence of parentage in any subsequent civil proceedings; such a finding will hold good for the subsequent proceedings unless the contrary is proved on the balance of probabilities.

55. *Section 50* sets up a presumption, rebuttable on the balance of probabilities, that a person named as the father of a child in a births register kept under the Births and Deaths Registration Acts is the father of the child.

56. *Section 51* gives statutory recognition to the decision of the High Court in *S. v. S.*, [1983] IR 68, that the rule of law (known as the rule in *Russell v. Russell*), under which neither spouse could give evidence which would tend towards rendering a child of their marriage illegitimate, ceased to have legal effect in the State after the enactment of the Constitution.

## PART IX

### REGISTRATION AND RE-REGISTRATION OF BIRTHS

57. *Section 52* will enable the Minister for Health to make regulations dealing with the registration or re-registration of the birth of a person who has obtained a declaration of parentage under *section 39*.

58. *Section 53* replaces the existing section 7 of the Births and Deaths Registration Act (Ireland), 1880, with two new sections dealing with the registration (new section 7) and re-registration (new section 7A) of the birth of a non-marital child. The existing section 7 requires, as a condition for entry of the name of the father of an illegitimate child, that the request for registration be made jointly by the father and the mother and that both parents sign the register. In practice, this means that both parents must attend the local registrar's office personally in order to register the child's birth; this contrasts with the position of the child born within marriage, where full details of birth and parentage appear on the register at the request of either parent or of (among other qualified informants) the "occupier of the house" where the birth took place (usually an employee of the maternity hospital).

59. The new section 7 deals with the registration in the first instance



of the birth of a non-marital child. Subsection (1) of the new section reflects the current position. Subsection (2) is, apart from paragraph (a), new; in addition to permitting joint registration, as before, it allows registration of the birth of the child including the father's name at the request of either parent supported by a declaration from the parent, and a statutory declaration from the other parent as to the paternity of the child, or at the written request of either parent supported by an appropriate court order naming the father as father of the child. Subsection (3) requires the register to be signed by the registrar and the requesting parent(s). Subsection (4) qualifies the father as an informant for registration purposes in the appropriate circumstances.

60. The new section 7A permits the registrar to re-register the birth of a non-marital child so as to show a person as father, where he has been requested to do so in the same manner as is specified in the new section 7(2) discussed in the previous paragraph. Section 7A(2) requires the register to be signed by the registrar and the requesting parent(s).

#### ARRANGEMENT OF SECTIONS

*An Roinn Dlí agus Cirt.  
Bealtaine, 1986.*

#### PART I

##### PRELIMINARY AND GENERAL

#### Section

1. Short title and commencement.
2. Interpretation.
3. Marital status of parents to be of no effect on relationships.
4. Construction of references to persons whose parents have or have not married each other, etc.
5. Meaning of father, mother, parent in Irish Nationality and Citizenship Act, 1956.

#### PART II

##### AMENDMENT OF THE ACT OF 1931

6. Definition (*Part II*).
7. Amendment of section 1 of the Act of 1931.

#### PART III

##### GUARDIANSHIP

8. Definition (*Part III*).
9. Amendment of section 2 of the Act of 1964.
10. Proof of paternity in certain proceedings.
11. Amendment of section 6 of the Act of 1964.
12. Power of court to appoint certain fathers as guardians.
13. Amendment of section 11 of the Act of 1964.



