



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

Mar a ritheadh ag Seanad Éireann
As passed by Seanad Éireann

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. The purpose of this Bill is to equalise the rights under the law of all children, whether born within or outside marriage. This is being achieved, firstly, 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. Secondly, important new provisions are being introduced into the law. These include a statutory procedure to enable any person to obtain a court declaration as to his parentage, and provisions governing the use of blood tests in determining parentage in civil proceedings. The Bill also amends the law relating to legal presumptions and other evidential matters, and to the 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(1) contains the short title of the Bill. By section 1(2)(a), Part I of the Bill comes into effect immediately on the enactment of the Bill, with the exceptions of section 3 (marital status of parents to have no effect on relationships) and section 4 (construction of references to persons whose parents have not married each other etc.); these sections come into effect one month after enactment. Section 1(2)(b) provides that the remaining Parts of the Bill will come into effect six months after the enactment of the Bill, or earlier if the Minister for Justice so orders (but no earlier than one month after enactment in any event).

5. *Section 2* is a standard interpretation provision.

6. *Section 3(1)* enunciates the general principle central to the Bill that, for the purposes of this and of future Acts, relationships are to be determined without regard to whether the parents of any person are or have been married to each other, unless the contrary intention appears. *Section 3(2)* ensures that for the purposes of that principle an adopted person will be treated from the date of the adoption as being the child of his adopter(s) and of no-one else. This applies not only to children adopted under domestic legislation but also to those adopted abroad whose adoptions are recognised by domestic law.

7. *Section 4* provides a rule of construction for expressions such as "a person whose parents have not married each other". Unless the contrary intention appears, such expressions used in this or future Acts will include a child whose parents were married to each other but whose marriage terminated (for whatever reason) more than ten months before the birth of the child. Such expressions will also include a child whose parents were not married to each other during the lifetime of the child or the ten months before the birth but who marry after the child's death. *Paragraph (b)* of the section provides for the converse case.

8. *Section 5* is a declaratory provision for the purposes of the Irish Nationality and Citizenship Act, 1956. It provides, in order to remove any doubt there may be, that the fact that a person's parents have not married each other is not a bar to Irish citizenship. Thus, a person born abroad whose parents have not married each other 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

9. 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 7(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 7(2)* makes the change effective from the date of commencement of this Part.

PART III

GUARDIANSHIP

10. 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 child whose

parents have not married each other to become guardian of the child jointly with the mother on application to the court (*section 12*); makes further changes arising out of this new provision (*sections 9, 11 and 13*); and makes clear the standard of proof of paternity which will apply in proceedings under the Act (*section 10*). The 1964 Act is also amended (*section 9*) so as to permit the fathers of children of certain annulled marriages to be guardians of their children as if the marriage was in each case valid.

11. *Section 9* replaces the definitions section of the 1964 Act with a new interpretation provision. Subsection (1) of the new provision re-enacts the existing definitions of the 1964 Act, but omitting that of "illegitimate infant" (no longer required) and amending that of "father". The latter term is now defined so as to take account of the fact that under the new *section 6A* of the 1964 Act (inserted by *section 12* of the Bill) a father who has not married the mother of his child may be appointed guardian.

12. Subsection (2) of the interpretation provision imports into the 1964 Act the new rule of construction (at *section 4* of this Bill) for references to the child of parents who have not married each other. Subsection (3) provides that a couple shall be treated for the purposes of the 1964 Act as having validly married each other (i.e., the father will be guardian of any child of the union without having to go through the *section 6A* procedure) if the marriage was a voidable one which was annulled after the child's conception (subsection (3)(a)(i)) or was a void marriage which the father reasonably believed at the appropriate time was a valid marriage (subsection (3)(a)(ii)). The reference to the commencement of *Part III* of the Act ensures that in the case of void marriages entered into, or voidable marriages annulled, before that date, the father will be guardian (jointly with the mother) of any minor children from that date, once the conditions of the subsection are met.

13. *Subsection (3)(b)* places on the person seeking to show that the father, in the case of a void marriage, is not guardian the onus of showing that the father's belief was not reasonable.

14. *Section 10* 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 an infant whose parents have not married each other, the court may not make any final 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. This does not prevent the court from making an interim order granting, say, custody or access to an alleged father who already exercised such rights pending determination of the paternity issue, if it considers that this is in the child's interests.

15. *Section 6(4)* of the 1964 Act provides that the mother of an illegitimate infant shall be guardian of the infant. *Section 11* of the Bill replaces this provision with one which declares that, where the parents of an infant have not married each other, the mother is the sole guardian of the infant, unless the father has been appointed guardian jointly with her under a subsisting court order made under the new *section 6A* of the 1964 Act (see *section 12*). 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.

16. *Section 12* inserts a new section 6A in the 1964 Act which will enable the court to appoint a father, not married to the mother of his infant child, 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 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 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, informal, 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.

17. Section 11(4) of the 1964 Act allows the father of an illegitimate child to apply for access to or custody of the child. *Section 13* of the Bill replaces this with a provision to the same effect applicable to the father of a child who has not married the mother and who has not been appointed guardian of the child. The restriction in the existing section 11(4) on applications for maintenance under section 11(2) is not repeated, having regard to the provisions at *Part IV* of the Bill which will enable either parent to seek maintenance from the other on behalf of the child.

PART IV

MAINTENANCE

18. 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 25*) 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.

19. 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 15* 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.

20. *Section 16* inserts new definitions in the 1976 Act. By *paragraph (a)* of this section, the new term "dependent child" is defined as to age and whether in full-time education or under physical or mental disability in the same terms as the existing definition of "dependent child of the family"; it is expressed to include children whose parents are not married to each other. The expression "dependent child of the

family" is restated accordingly in *paragraph (b)*. The new definition of "lump sum order" and the re-definition of "maintenance order" are required for the purposes of *sections 21 and 18* of the Bill respectively. A definition (new to the 1976 Act) of the term "parent" is inserted so as to include in the term an adopter of a child under the Adoption Acts, but otherwise to exclude a person who is the natural parent of an adopted child.

21. *Section 17 (b)* 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 reference to dependent children of whom either spouse is a parent, as well as dependent children of the family.

22. *Section 18* inserts a new section 5A into the 1976 Act, providing 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 child whose the parents are not married to each other. (This would include a child whose parents have been, but are not now, married to each other.) 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 child covered by the section.

23. *Section 19* modifies section 6(3) of the 1976 Act (providing for the discharge of a maintenance order) so as to cover orders both under section 5 in so far as they relate to dependent children of the family and under the new section 5A inserted by *section 18* of the Bill.

24. *Section 20* inserts a new section 8A in the 1976 Act, in relation to agreements between the parents of a dependent child who are not married to each other, analogous to that at section 8 of the Act which enables certain marital agreements between spouses to be made a rule of court.

25. *Section 21* 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, whether of the family or of parents who are not married to each other. This type of order is available at present only in relation to illegitimate children (sections 3(1) and 7 of the 1930 Act).

26. *Section 22* 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 23* inserts into section 24 of that Act (payments to be made without deduction of income tax) a reference to the new section 8A; and *section 24* effects some amendments in the Defence Act, 1954, consequential on the other provisions of this Part of the Bill.

27. *Section 25* repeals the Illegitimate Children (Affiliation Orders) Act, 1930, and contains some consequential transitional provisions.

PART V

PROPERTY RIGHTS

28. The main effect of this Part is to apply to the Succession Act, 1965 (*section 30*) and to wills and other dispositions (*section 27*) the general principle (enunciated at *section 3* of the Bill) that relationships between persons are to be determined without regard to whether any person's parents are or have been married to each other.

29. *Section 27* 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 in respect of dispositions made after the commencement of *Part V*, and will ensure that, in any such disposition, 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.

30. *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.

31. *Subsection (3)* has the effect of applying the provisions of *section 26* of the Adoption Act, 1952 (which relates to the property rights of persons adopted under the Adoption Acts) to persons adopted abroad whose adoptions are recognised under Irish law.

32. *Subsection (4)(a)* provides that this section is without prejudice to *section 26* of the Adoption Act, 1952. 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.)

33. *Subsection (5)* 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. *Subsection (6)* 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 (7)* 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.

34. Section 28(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).

35. Section 29 amends the definitions section of the Succession Act, 1965, by changing the definition of the term "issue" to accord with the new section 4A of the 1965 Act, being inserted by section 30, and by importing into that Act the construction of expressions such as "a person whose parents have not married each other" provided for at section 4 of the Bill.

36. 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), being inserted in the 1965 Act by section 30 of the Bill, 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 child, whose parents have not married each other and 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 (as construed in accordance with section 27(3) of the Bill), 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 31 extends the Circuit Court's jurisdiction under the 1965 Act to include the matters relating to intestate succession dealt with at section 34 (exclusion of unworthy father).

38. Section 32 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 whose parents have not married each other or who is related to him through such a person.

39. Section 33 amends section 117 of the 1965 Act so as to ensure that, in any case where a testator who has not married the other parent of his or her child dies after the commencement of this Part, the child 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.

40. Section 34 inserts a new section 120A into the 1965 Act. This would enable a court, on application, to declare that, where a person whose parents have not married each other dies intestate, the father of the deceased 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 the deceased 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

41. 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.

42. *Section 37* 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, and also a special provision for parties outside the State.

43. *Section 38(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 (3)*). *Subsection (2)* ensures that applications may be made and declarations granted where an alleged parent is deceased. *Subsection (4)* 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. *Subsections (5) and (6)* 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 (7)* provides for notice of the proceedings to be given to interested persons and permits their joinder as parties to the proceedings. Under *subsection (8)*, the Court will grant the declaration sought where the fact of parentage is proved on the balance of probabilities. *Subsection (9)* 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.

44. *Section 39* 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 51*).

PART VII

BLOOD TESTS IN DETERMINING PARENTAGE IN CIVIL PROCEEDINGS

45. 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.

46. *Section 41* 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 42(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.

47. *Section 43* 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.

48. *Section 44* provides for the making of regulations by the Minister for Justice for the purpose of giving effect to this Part.

49. *Section 45* 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 38*; 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 of paternity, 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

50. Section 47 abolishes the present presumptions of legitimacy arising out of marriage and illegitimacy arising out of divorce *a mensa et thoro*.

51. Section 48 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.

52. Section 49 replaces the former presumptions of legitimacy and illegitimacy by presumptions of paternity and non-paternity. Subsection (1) provides that, where a married woman, or a woman whose marriage terminated less than ten months beforehand, gives birth to a child, her husband will be presumed to be the father of the child (at present, such a child is presumed to be legitimate). An exception is provided for by subsection (2), to cover the case where the husband and wife are living apart under a decree of divorce *a mensa et thoro* for more than ten months before the birth; in that case the husband will be presumed not to be the child's father (at present such a child is presumed to be illegitimate). Subsection (3) sets up a presumption that a person named as father in a births register kept under the Births and Deaths Registration Acts is the father of the child. In the event of a conflict between the presumption at subsection (3) and that at subsection (1), the presumption at subsection (3) will prevail: thus, in the case of a married woman, where a man other than her husband is named as father in the births register, then that man, and not the husband, will be presumed to be the father.

53. The presumptions provided for in section 49 will be rebuttable on the normal standard of proof required in civil proceedings, i.e., the balance of probabilities. At present, the standard required to rebut the presumption of legitimacy is proof beyond a reasonable doubt.

54. Section 50 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

55. Section 51 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 38.

56. Section 52 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 child whose parents were not married to each other at the time of the birth or at any time during the previous ten months.

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).

57. The new section 7 deals with the registration in the first instance of the birth of a child whose parents were not married to each other at the time of the birth or at any time during the previous ten months. Subsection (1) of the new section reflects the current position. Subsection (2), in addition to permitting entry of the father's name at the joint request of both parents, as before, allows the father's name to be entered on the register at the request of either parent supported by a declaration from that 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.

58. Subsection (3) enables the registrar to enter the father's name on the births register where the birth of a child of a married woman and a man other than her husband is to be registered, and the husband, the mother and the father all consent to the entering of the father's name. This gives statutory effect to the decision of the High Court on this matter in *S. v. S.*, [1983] IR 68. Prior to that decision it had been necessary to obtain a declaration from the High Court in all cases where a married woman and the father of her child (where the father was not her husband) wished the father's name to be entered on the register, even where the husband consented. In cases such as this, where the husband is unavailable or refuses to consent, it will, as at present, be necessary to obtain a court order before the father's name may be entered on the register; but by virtue of subsection (2) (d) of this section, it will be sufficient for this to be an order appointing the father as guardian or an order of the kind mentioned in section 48 of the Bill.

59. Subsection (4) requires the register to be signed by the registrar and the requesting parent(s). Subsection (5) qualifies the father as an informant for registration purposes in the appropriate circumstances.

60. The new section 7A deals with the re-registration of the birth of a child whose parents are not married to each other at the time of the birth or at any time during the previous ten months, where no father's name has been entered on the register. The section permits the registrar to re-register the birth so as to show a person as father in circumstances, and subject to requirements, similar to those set out in the new section 7(2), (3) and (4) discussed above.

*An Roinn Dlí agus Cirt.
Eanáir, 1987.*

An Romain De aguz Cit.