



Number 26 of 1987

STATUS OF CHILDREN ACT 1987

REVISED

Updated to 4 May 2020

This Revised Act is an administrative consolidation of the *Status of Children Act 1987*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975 (3/1975)* to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including the *Emergency Measures in the Public Interest (Covid-19) Act 2020 (2/2020)*, enacted 27 March 2020, and all statutory instruments up to and including the *Planning and Development Act 2000 (Subsection (4) of Section 251A) (No. 2) Order 2020 (S.I. No. 165 of 2020)*, made 8 May 2020, were considered in the preparation of this Revised Act.

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Introduction

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

This Act is not collectively cited with any other legislation. It was previously included in the collectively cited *Births and Deaths Registration Acts 1863 to 1996*, most of which were repealed (5.12.2005 and 5.11.2007) by the *Civil Registration Act 2004* (3/2004), s. 4 and sch. 2, S.I. No. 764 of 2005 and S.I. No. 736 of 2007.

Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at www.lawreform.ie/annotations.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1972, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Mediation Act 2017* (27/2017)
- *Children and Family Relationships Act 2015* (9/2015)

- *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013)
- *Adoption Act 2010* (21/2010)
- *Civil Liability and Courts Act 2004* (31/2004)
- *Civil Registration Act 2004* (3/2004)
- *Taxes Consolidation Act 1997* (39/1997)
- *Births and Deaths Registration Acts 1863 to 1996*
- *Registration of Births Act 1996* (36/1996)
- *Family Law Act 1995* (26/1995)
- *Stillbirths Registration Act 1994* (1/1994)
- *Judicial Separation and Family Law Reform Act 1989* (6/1989)
- *Finance Act 1988* (12/1988)

All Acts up to and including *Emergency Measures in the Public Interest (Covid-19) Act 2020* (2/2020), enacted 27 March 2020, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *Registration of Stillbirths Regulations 1994* (S.I. No. 426 of 1994)
- *Blood Tests (Parentage) Regulations 1988* (S.I. No. 215 of 1988)
- *Registration of Births Regulations 1988* (S.I. No. 123 of 1988)

All statutory instruments up to and including *Planning and Development Act 2000 (Subsection (4) of Section 251A) (No. 2) Order 2020* (S.I. No. 165 of 2020), made 8 May 2020, were considered in the preparation of this revision.



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 ACTS REFERRED TO

Adoption Act, 1952	1952, No. 25
Adoption Acts, 1952 to 1976	
Age of Majority Act, 1985	1985, No. 2
Births and Deaths Registration Act (Ireland), 1880	43 and 44 Vict., c. 13
Births and Deaths Registration Acts, 1863 to 1972	
Courts Act, 1981	1981, No. 11
Defence Act, 1954	1954, No. 18
Defence (Amendment) (No. 2) Act, 1979	1979, No. 28
Evidence Further Amendment Act, 1869	32 and 33 Vict., c. 68
Family Law (Maintenance of Spouses and Children) Act, 1976	1976, No. 11
Friendly Societies Act, 1896	59 and 60 Vict., c. 25
Guardianship of Infants Act, 1964	1964, No. 7
Health Act, 1970	1970, No. 1
Illegitimate Children (Affiliation Orders) Act, 1930	1930, No. 17
Industrial and Provident Societies Act, 1893	56 and 57 Vict., c. 39
Irish Nationality and Citizenship Acts, 1956 and 1986	
Legitimacy Act, 1931	1931, No. 13
Local Government (Superannuation) Act, 1956	1956, No. 10
Provident Nominations and Small Intestacies Act, 1883	46 and 47 Vict., c. 47
Savings Banks Act, 1887	50 and 51 Vict., c. 40
Social Welfare (Consolidation) Act, 1981	1981, No. 1
Succession Act, 1965	1965, No. 27
Superannuation Act, 1887	50 and 51 Vict., c. 67



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AN ACT TO EQUALISE THE RIGHTS OF CHILDREN AND AMEND THE LAW RELATING TO THEIR STATUS AND FOR THOSE PURPOSES TO AMEND THE LAW RELATING TO LEGITIMACY AND TO GUARDIANSHIP OF INFANTS, TO AMEND AND EXTEND THE FAMILY LAW (MAINTENANCE OF SPOUSES AND CHILDREN) ACT, 1976, IN RELATION TO CERTAIN CHILDREN AND TO AMEND FURTHER THE LAW RELATING TO MAINTENANCE, TO AMEND THE LAW RELATING TO SUCCESSION AND OTHER PROPERTY RIGHTS, TO PROVIDE FOR DECLARATIONS OF PARENTAGE AND FOR THE USE OF BLOOD TESTS TO ASSIST IN THE DETERMINATION OF PARENTAGE, TO AMEND THE LAW RELATING TO CERTAIN PRESUMPTIONS AND EVIDENCE, TO MAKE FURTHER PROVISION FOR THE REGISTRATION AND RE-REGISTRATION OF BIRTHS AND TO PROVIDE FOR CONNECTED MATTERS. [14th December, 1987]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Annotations

Modifications (not altering text):

Editorial Notes:

- E1** Proceedings under Act included in definition of “family law proceedings” (1.01.2018) by *Mediation Act 2017 (27/2017)*, s. 2, S.I. No. 591 of 2017.
- E2** The Court may give directions to obtain a written report on any questions affecting the welfare of a party to the proceedings or any other person to whom the proceedings relate as provided (1.08.1996) by *Family Law Act 1995 (26/1995)*, s. 47(1) and s. 47(6)(e), S.I. No. 46 of 1996.
- E3** Proceedings under Act included in definition of “family law proceedings” (19.10.1989) by *Judicial Separation and Family Law Reform Act 1989 (6/1989)*, s. 30, commenced as per s. 46(2).
- E4** Circuit Court to be known as the Circuit Family Court when exercising its jurisdiction to hear and determine family law proceedings as provided (19.10.1989) by *Judicial Separation and Family Law Reform Act 1989 (6/1989)*, s. 31(1), commenced as per s. 46(2).
- E5** Circuit Family Court authorised to hear and determine proceedings instituted under Act at different places, times or days (19.10.1989) by *Judicial Separation and Family Law Reform Act 1989 (6/1989)*, s. 32, commenced as per s. 46(2).

E6 Conduct of family proceedings in District Court, Circuit Family Court and High Court required to be informal (19.10.1989) by *Judicial Separation and Family Law Reform Act 1989* (6/1989), ss. 33 and 45, commenced as per s. 46(2).

PART I

PRELIMINARY AND GENERAL

Short title and commencement.

1.—(1) This Act may be cited as the Status of Children Act, 1987.

(2) (a) This Part (other than *sections 3 and 4*) shall come into operation on the passing of this Act and the said *sections 3 and 4* shall come into operation one month after such passing.

(b) *Parts II to IX* shall come into operation six months after the passing of this Act or on such earlier day or days (not being earlier than one month after such passing) as may be fixed therefor by order or orders of the Minister for Justice, either generally or with reference to any particular Part or Parts.

Interpretation.

2.—In this Act, a reference to a Part is to a Part of this Act unless the context requires that a reference to some other enactment is intended.

Marital status of parents to be of no effect on relationships.

3.—(1) In deducing any relationship for the purposes of this Act or of any Act of the Oireachtas passed after the commencement of this section, the relationship between every person and his father and mother (or either of them) shall, unless the contrary intention appears, be determined irrespective of whether his father and mother are or have been married to each other, and all other relationships shall be determined accordingly.

(2) (a) An adopted person shall, for the purposes of *subsection (1)* of this section, be deemed from the date of the adoption to be the child of the adopter or adopters and not the child of any other person or persons.

F1[(b) In this subsection 'adopted person' means a person who has been adopted under an adoption order within the meaning of section 3 (1) of the Adoption Act 2010 or, where the person has been adopted outside the State, whose adoption is recognised by virtue of the law for the time being in force in the State.]

Annotations

Amendments:

F1 Substituted (1.11.2010) by *Adoption Act 2010* (21/2010), s. 172(a), S.I. No 511 of 2010.

Editorial Notes:

E7 Provision for certain Taxes Acts to be construed in accordance with section provided (various dates) by *Taxes Consolidation Act 1997* (39/1997), s. 8, commenced as per s. 1097.

E8 Provision for certain Taxes Acts to be construed in accordance with section provided (25.05.1988) by *Finance Act 1988* (12/1988), s. 74, commenced on enactment.

Construction of references to persons whose parents have or have not married each other, etc.

4.—In this Act and in every Act of the Oireachtas passed after the commencement of this section—

- (a) a reference, however expressed, to a person whose parents have not married each other shall, unless the contrary intention appears, be construed as including a reference to a person whose parents are or have been married to each other but between whom there has been no subsisting marriage at any time during the period of ten months before the person's birth, or during the persons's lifetime, and
- (b) a reference, however expressed, to a person whose parents have married each other shall, unless the contrary intention appears, be construed as excluding a reference to a person in respect of whom *paragraph (a)* of this section applies.

Meaning of father, mother, parent in Irish Nationality and Citizenship Acts, 1956 and 1986.

5.—It is hereby declared that, in relation to a child, any reference to "father", "mother" or "parent" in the Irish Nationality and Citizenship Acts, 1956 and 1986, includes and shall be deemed always to have included the father, mother or parent, as the case may require, who was not married to the child's other parent at the time of the child's birth or at any time during the period of ten months preceding the birth.

PART II

AMENDMENT OF THE ACT OF 1931

Definition (*Part II*).

6.—In this Part "the Act of 1931" means the Legitimacy Act, 1931.

Amendment of section 1 of the Act of 1931.

7.—(1) Section 1(2) of the Act of 1931 (which precludes the operation of that Act in the case of a person whose father and mother could not have been lawfully married to one another at the time of his birth or at some time during the period of ten months preceding such birth) is hereby repealed.

(2) In the case of a person to whom this section relates, the Act of 1931 shall have effect as if for the references in sections 1(1) and 5 of that Act to the commencement of that Act there were substituted a reference to the commencement of this Part.

PART III

GUARDIANSHIP

Definition (*Part III*).

8.—In this Part "the Act of 1964" means the Guardianship of Infants Act, 1964.

Amendment of section 2 of the Act of 1964.

9.—The Act of 1964 is hereby amended by the substitution for section 2 of the following section:

"Interpretation.

2.—(1) In this Act except where the context otherwise requires—

'adoption order' means—

- (a) an adoption order made under the Adoption Acts, 1952 to 1976, or
- (b) any order made or decree granted outside the State, providing for the adoption of a person, which is recognised by virtue of the law for the time being in force in the State,

and for the time being in force;

‘the Act of 1987’ means the *Status of Children Act, 1987*;

‘father’ includes a male adopter under an adoption order, but, subject to section 11 (4) of this Act, does not include the father of an infant who has not married that infant’s mother unless either—

(a) an order under section 6A (inserted by the Act of 1987) is in force in respect of that infant, or

(b) the circumstances set out in subsection (3) of this section apply;

‘infant’ shall be construed in accordance with section 2 of the Age of Majority Act, 1985;

‘maintenance’ includes education;

‘mother’ includes a female adopter under an adoption order;

‘parent’ means a father or mother as defined by this subsection;

‘testamentary guardian’ means a guardian appointed by deed or will;

‘welfare’, in relation to an infant, comprises the religious and moral, intellectual, physical and social welfare of the infant.

(2) A reference, however expressed, in this Act to an infant whose father and mother have not married each other shall, except in a case to which subsection (3) of this section relates, be construed in accordance with *section 4* of the Act of 1987.

(3) (a) The circumstances referred to in paragraph (b) of the definition of ‘father’ in subsection (1) of this section are that the father and mother of the infant concerned have at some time gone through a ceremony of marriage and the ceremony resulted in—

(i) a voidable marriage in respect of which a decree of nullity was granted after, or at some time during the period of ten months before, the birth of the infant, or

(ii) a void marriage which the father reasonably believed (whether or not such belief was due to a mistake of law or of fact) resulted in a valid marriage—

(I) where the ceremony occurred before the birth of the infant, at some time during the period of ten months before that birth, or

(II) where the ceremony occurred after the birth of the infant, at the time of that ceremony.

(b) It shall be presumed for the purposes of paragraph (a) (ii) of this subsection, unless the contrary is shown, that the father reasonably believed that the ceremony of marriage to which that paragraph relates resulted in a valid marriage.”

Proof of paternity in certain proceedings. **10.**—The Act of 1964 is hereby amended by the insertion after section 3 of the following section:

“3A.—Where in any proceedings before any court on an application for an order under this Act (other than so much of any proceedings as *section 15* of the Act of 1987 relates to) in respect of an infant whose father and mother have not married each other, a person (being a party to the proceedings) is alleged to be, or alleges that he is, the father of the infant but that allegation is not

admitted by a party to the proceedings, the court shall not on that application make any final order which imposes any obligation or confers any right on that person unless it is proved on the balance of probabilities that he is the father of the infant:

Provided that this section applies only where the fact that that person is or is not the father of the infant is material to the proceedings.”.

Amendment of section 6 of the Act of 1964.

11.—Section 6 of the Act of 1964 is hereby amended by the substitution of the following subsection for subsection (4):

“(4) Where the mother of an infant has not married the infant’s father, she, while living, shall alone be the guardian of the infant unless there is in force an order under section 6A (inserted by the Act of 1987) of this Act or a guardian has otherwise been appointed in accordance with this Act.”.

Power of court to appoint certain fathers as guardians.

12.—The Act of 1964 is hereby amended by the insertion after section 6 of the following section:

“6A.—(1) Where the father and mother of an infant have not married each other, the court may, on the application of the father, by order appoint him to be a guardian of the infant.

(2) Without prejudice to the provisions of sections 5(3) (inserted by the Courts Act, 1981), 8 (4) and 12 of this Act, the appointment by the court under this section of the father of an infant as his guardian shall not affect the prior appointment of any person as a guardian of the infant under section 8 (1) of this Act unless the court otherwise orders.

(3) Rules of court shall provide a special procedure for determining an application under this section where—

(a) the mother consents in writing to the appointment of the father as guardian, and

(b) the father is registered as the father in a register maintained under the *Births and Deaths Registration Acts, 1863 to 1987*,

and such procedure shall be as informal as is practicable and consistent with the administration of justice.”.

Amendment of section 11 of the Act of 1964.

13.—Section 11 of the Act of 1964 is hereby amended by the substitution of the following subsection for subsection (4):

“(4) In the case of an infant whose father and mother have not married each other, the right to make an application under this section regarding the custody of the infant and the right of access thereto of his father or mother shall extend to the father who is not a guardian of the infant, and for this purpose references in this section to the father or parent of an infant shall be construed as including him.”.

PART IV

MAINTENANCE

Definition (*Part IV*).

14.—In this Part “the Act of 1976” means the Family Law (Maintenance of Spouses and Children) Act, 1976.

Disputed parentage in maintenance proceedings, etc.

15.—Where, in any proceedings before a court relating to the maintenance of a child or the payment of a lump sum in respect of the expenses for the birth or funeral of a child, the making of an order for the purpose of granting such maintenance or the payment of such a lump sum, as the case may be, depends on a finding that a person is a parent of the child, the court shall not in those proceedings make any such order unless it is proved on the balance of probabilities that that person is a parent of the child.

Amendment of section 3 of the Act of 1976.

16.—Section 3 of the Act of 1976 is hereby amended in subsection (1)—

(a) by the insertion after the definition of “Court” of the following definition:

“‘dependent child’ means any child (including a child whose parents are not married to each other) who is under the age of sixteen years, or, if he has attained that age—

(a) is or will be or, if an order were made under this Act providing for periodical payments for his support, would be receiving full-time education or instruction at any university, college, school or other educational establishment and is under the age of twenty-one years, or

(b) is suffering from mental or physical disability to such extent that it is not reasonably possible for him to maintain himself fully;”,

(b) by the substitution for the definition of “dependent child of the family” of the following definition:

“‘dependent child of the family’, in relation to a spouse or spouses, means any dependent child—

(a) of both spouses, or adopted by both spouses under the Adoption Acts, 1952 to 1976, or in relation to whom both spouses are in *loco parentis*, or

(b) of either spouse, or adopted by either spouse under the Adoption Acts, 1952 to 1976, or in relation to whom either spouse is in *loco parentis*, where the other spouse, being aware that he is not the parent of the child, has treated the child as a member of the family;”,

(c) by the insertion after the definition of “interim order” of the following definition:

“‘lump sum order’ means an order under section 21A of this Act;”,

(d) by the substitution of the following definition for the definition of “maintenance order”:

“‘maintenance order’ means, where the context requires, an order under either section 5 or 5A of this Act;”,

and

(e) by the insertion before the definition of “variation order” of the following definition:

“‘parent’, in relation to a dependent child, includes a person who has adopted the child under the Adoption Acts, 1952 to 1976, but does not include a person who is a parent of the child adopted under those Acts where the person is not an adopter of the child;”.

Amendment of section 5 of the Act of 1976.

17.—Section 5 of the Act of 1976 is hereby amended—

(a) by the insertion in subsection (1) (c)—

- (i) of “under this section” after “maintenance order”, and
 - (ii) of “of the family” after “dependent child” in each place it occurs,
- and

(b) by the substitution of the following subsection for subsection (4):

“(4) The Court, in deciding whether to make a maintenance order under this section and, if it decides to do so, in determining the amount of any payment, shall have regard to all the circumstances of the case and, in particular, to the following matters—

(a) the income, earning capacity (if any), property and other financial resources of—

- (i) the spouses and any dependent children of the family, and
 - (ii) any other dependent children of which either spouse is a parent,
- including income or benefits to which either spouse or any such children are entitled by or under statute, and

(b) the financial and other responsibilities of—

- (i) the spouses towards each other and towards any dependent children of the family, and
 - (ii) each spouse as a parent towards any other dependent children,
- and the needs of any such children, including the need for care and attention.”,

and the said subsection (1) (c), as so amended, is set out in the Table to this section.

TABLE

(c) A maintenance order under this section or a variation order shall specify each part of a payment under the order that is for the support of a dependent child of the family and may specify the period during the lifetime of the person applying for the order for which so much of a payment under the order as is for the support of a dependent child of the family shall be made.

Maintenance order (provision for certain dependent children).

18.—The Act of 1976 is hereby amended by the insertion after section 5 of the following section:

“5A.—(1) Subject to subsection (3) of this section, where, in respect of a dependent child whose parents are not married to each other, it appears to the Court on application to it by either parent of the child that the other parent has failed to provide such maintenance for the child as is proper in the circumstances, the Court may make an order (in this Act referred to as a maintenance order) that the other parent make to the applicant parent periodical payments, for the support of the child as aforesaid, for such period during the lifetime of the applicant parent, of such amount and at such times, as the Court may consider proper.

(2) Subject to subsections (3) and (4) of this section, where in respect of a dependent child whose parents are not married to each other it appears to the Court, on application to it by any person other than a parent, that a parent of the child (not being a child who is being fully maintained by the other parent) has failed to provide such maintenance for the child as is proper in the circumstances, the Court may make an order (in this Act referred to as a maintenance order) that the parent make to that person periodical payments

for the support of the child for such period during the lifetime of that person, of such amount and at such times as the Court may consider proper.

(3) The Court, in deciding whether to make a maintenance order under this section and, if it decides to do so, in determining the amount of any payment, shall have regard to all the circumstances of the case and, in particular, to the following matters—

(a) the income, earning capacity (if any), property and other financial resources of—

(i) each parent,

(ii) the dependent child in respect of whom the order is sought, and

(iii) any other dependent children of either parent,

including income or benefits to which either parent, the dependent child as aforesaid or such other dependent children are entitled by or under statute, and

(b) the financial and other responsibilities of each parent towards—

(i) a spouse,

(ii) the dependent child in respect of whom the order is sought, and

(iii) any other dependent children of either parent,

and the needs of any dependent child as aforesaid or of any such other dependent children, including the need for care and attention.

(4) The Court shall not make a maintenance order under subsection (2) of this section in relation to a parent of a dependent child if a maintenance order under subsection (1) of this section requiring that parent to make periodical payments for the support of the child is in force or that parent has made provision for the child by an agreement under which, at or after the time of the hearing of the application for the order under the said subsection (2), payments fall to be made and in relation to which an order under section 8A of this Act has been made unless—

(a) the parent is not complying with the order under the said subsection (1) or the agreement, as the case may be, and

(b) the Court, having regard to all the circumstances, thinks it proper to do so,

but, if the Court makes the order under the said subsection (2), any amounts falling due for payment under the order under the said subsection (1) or the agreement, as the case may be, on or after the date of the making of the order under the said subsection (2) shall not be payable.”.

Amendment of section 6 of the Act of 1976.

19.—Section 6 of the Act of 1976 is hereby amended in subsection (3)—

(a) by the deletion of “of the family” where it first occurs, and

(b) by the substitution of “for the purposes of the order” for “of the family” where it last occurs,

and the said subsection, as so amended, is set out in the Table to this section.

TABLE

(3) That part of a maintenance order which provides for the support of a dependent child shall stand discharged when the child ceases to be a dependent child by reason of his attainment of the age of sixteen years or twenty-one years, as the case may be, and shall be discharged by the Court, on application to it under subsection (1) of this section, if it is satisfied that the child has for any reason ceased to be a dependent child for the purposes of the order.

Orders in respect of certain other agreements.

20.—The Act of 1976 is hereby amended by the insertion after section 8 of the following section:

“8A.—Where—

(a) the parents of a dependent child who are not married to each other enter into an agreement in writing after the commencement of *Part IV* of the *Status of Children Act, 1987*, that includes either or both of the following provisions, that is to say—

(i) a provision whereby a parent undertakes to make periodical payments towards the maintenance of the child,

(ii) a provision affecting the interests of the child which governs the rights and liabilities of the parents towards one another in respect of the making or securing of payments (other than payments specified in paragraph (a)(i) of this section), or the disposition or use of any property,

and

(b) an application is made by one or both of the parents to the High Court or the Circuit Court for an order making the agreement a rule of court,

that Court may make such an order if it is satisfied that the agreement is a fair and reasonable one which in all the circumstances adequately protects the interests of the child and such order shall, in so far as it relates to a provision specified in paragraph (a)(i) of this section, be deemed, for the purposes of section 9 and Part III of this Act, to be a maintenance order.”.

Birth and funeral expenses of dependent child.

21.—(1) The Act of 1976 is hereby amended by the insertion after section 21 of the following section:

“21A.—(1) The Court may make an order (in this Act referred to as a lump sum order) where it appears to the Court on application by—

(a) in relation to a dependent child of the family, a spouse, or

(b) in relation to a dependent child whose parents are not married to each other, a parent,

that the other spouse or parent, as the case may be, has failed to make such contribution as is proper in the circumstances towards the expenses incidental to either or both—

(i) the birth of a child who is a dependent child or who would have been a dependent child were he alive at the time of the application for a lump sum order,

(ii) the funeral of a child who was a dependent child or who would have been a dependent child had he been born alive,

and any lump sum order shall direct the respondent spouse or parent, as the case may be, to pay to the applicant a lump sum not exceeding £1,500, but no such order shall direct the payment of an amount exceeding £750 in respect of

the birth of a child to whom this section relates or £750 in respect of the funeral of such a child.

(2) Section 5 (4) (as amended by the *Status of Children Act, 1987*) or 5A (3) (inserted by the said Act) of this Act, as may be appropriate, shall apply for the purpose of determining the amount of any lump sum under this section as it applies for the purpose of determining the amount of any payment under 5A of this Act, as appropriate.

(3) (a) Nothing in this section, apart from this subsection, shall prejudice any right of a person otherwise to recover moneys expended in relation to the birth or funeral of a child.

(b) Where an application for a lump sum order has been determined, the applicant shall not be entitled otherwise to recover from the respondent moneys in relation to matters so determined.”

(2) Section 64 of the Health Act, 1970, is hereby amended by the substitution of the following subsection for subsection (3):

“(3) In deciding whether or not to make an order under section 21A of the Family Law (Maintenance of Spouses and Children) Act, 1976 (inserted by the *Status of Children Act, 1987*), in so far as any such order relates to the payment of expenses incidental to the birth of a child, the Circuit Court or the District Court, as the case may be, shall not take into consideration the fact that the mother of the child is entitled to a grant under this section.”

(3) Section 28 of the Social Welfare (Consolidation) Act, 1981, is hereby amended by the substitution of the following subsection for subsection (2):

“(2) In deciding whether or not to make an order under section 21A of the Family Law (Maintenance of Spouses and Children) Act, 1976 (inserted by the *Status of Children Act, 1987*), in so far as any such order relates to the payment of expenses incidental to the birth of a child, the Circuit Court or the District Court, as the case may be, shall not take into consideration the fact that the mother of the child is entitled to maternity allowance.”

Amendment of section 23 of the Act of 1976.

22.—Section 23 of the Act of 1976 is hereby amended by the substitution in subsection (1) (inserted by the Courts Act, 1981) of “sections 5, 5A, 6, 7, 9 and 21A” for “sections 5, 6, 7 and 9”, and the said subsection (1), as so amended, is set out in the Table to this section.

TABLE

(1) Subject to subsection (2) of this section, the Circuit Court and the District Court shall have jurisdiction to hear and determine proceedings under sections 5, 5A, 6, 7, 9 and 21A of this Act.

Amendment of section 24 of the Act of 1976.

23.—Section 24 of the Act of 1976 is hereby amended by the insertion of “or 8A” after “section 8” and by the substitution of “either of those sections” for “that section”, and the said section, as so amended, is set out in the Table to this section.

TABLE

24.—A periodical payment of money pursuant to a maintenance order, a variation order, an interim order, an order under section 8 or 8A of this Act (in so far as it is deemed under either of those sections to be a maintenance order), or an attachment of earnings order shall be made without deduction of income tax.

Amendment of
Defence Act,
1954.

24.—(1) The reference in section 98(1)(d) of the Defence Act, 1954, to an order made by a civil court under section 3, 6 or 7 of the Illegitimate Children (Affiliation Orders) Act, 1930, shall be construed as a reference to an order under section 5A, 6, 7 or 21A of the Act of 1976 (as amended by this Part) or an order under section 8A (inserted by this Part) of the Act of 1976 (in so far as it is deemed under that section to be a maintenance order).

(2) Section 99 (as extended to women by virtue of sections 2 and 5 of the Defence (Amendment) (No. 2) Act, 1979) of the Defence Act, 1954 (which relates to deductions from the pay of certain members of the Permanent Defence Force in respect of maintenance of a spouse or legitimate children) is hereby amended by the substitution in subsection (1) of “his spouse or any of his children (including any of his children in respect of whom his spouse is not a parent and any children he has adopted under the Adoption Acts, 1952 to 1976)” for “his wife or any of his legitimate children” and of “the spouse or any such children” for “the wife or such legitimate children”.

Repeal of the Act
of 1930 and
consequential
provisions.

25.—(1) The Illegitimate Children (Affiliation Orders) Act, 1930 (hereafter in this section referred to as “the Act of 1930”) is hereby repealed.

(2) Any order made by a court under the provisions of the Act of 1930 and in force immediately before the commencement of this Part shall, in so far as such order could have been made under section 5A (inserted by this Part) of the Act of 1976 had it been in operation when that order was made, be deemed for all purposes to be an order made under the said section 5A.

(3) Any proceedings initiated under the provisions of the Act of 1930 and not completed before the commencement of this Part shall, in so far as such proceedings could have been initiated under section 5A of the Act of 1976 had it been in operation at such initiation, be deemed for all purposes to be proceedings under the said section 5A and may be continued accordingly.

(4) *Subsections (2) and (3)* of this section are without prejudice to any proceedings initiated, or any order or part of such order made, under the Act of 1930 to which those subsections do not relate.

PART V

PROPERTY RIGHTS

Definition (*Part*
V).

26.—In this Part “the Act of 1965” means the Succession Act, 1965.

Construction of
dispositions, etc.

27.—(1) In any disposition (including a disposition creating an entailed estate) made after the commencement of this Part, references, however expressed, to relationships between persons shall be construed in accordance with *section 3* of this Act.

(2) The following provisions of section 3 of the Legitimacy Act, 1931, namely—

(a) subsection (1) (b) (which relates to the effect of dispositions where a person has been legitimated),

(b) subsection (1) (c) (which relates to the effect of legitimation on entailed estates), and

(c) subsection (2) (which provides that, where the right to any property depends on the relative seniority of the children of any person, legitimated persons shall rank as if born on the date of legitimation),

shall not apply—

- (i) in the case of the said subsection (1) (b), to a disposition made after the commencement of this Part,
- (ii) in the case of the said subsection (1) (c), in relation to any entitlement under an entailed estate created by a disposition made after the commencement of this Part, and
- (iii) in the case of the said subsection (2), in relation to any right conferred by 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.

(3) For the purpose of any property right to which this section or section 4A (inserted by this Act) of the Act of 1965 relates, F2[*section 60 of the Adoption Act 2010 (which relates to the property rights of persons adopted under the Adoption Act 2010)*] shall be construed as applying also to any person adopted outside the State whose adoption is recognised by virtue of the law for the time being in force in the State.

(4) (a) Subject to *paragraph (b)* of this subsection, this section is without prejudice to F2[*section 60 (as construed in accordance with subsection (3) of this section) of the Adoption Act 2010*]

(b) An adopted person shall, unless the contrary intention appears, be entitled to take under a disposition made after the commencement of this Part in the same manner as he would have been entitled to so take if, at the date of the adoption order, he had been born in lawful wedlock to the person or persons who so adopted him.

(5) Any rule of law that a disposition in favour of illegitimate children not in being when the disposition takes effect is void as contrary to public policy is hereby abrogated as respects such dispositions made after the commencement of this Part.

(6) In relation to any disposition made before the commencement of this Part—

(a) nothing in this section shall affect the operation or construction of, or any entitlement under, any disposition so made, and

(b) where such a disposition creates a special power of appointment, nothing in this section shall be interpreted as extending the class of persons in whose favour the appointment may be made so as to include any person who is not a member of that class.

(7) (a) In this section “disposition” means a disposition, including an oral disposition, of real or personal property whether *inter vivos* or by will or codicil.

(b) Notwithstanding any rule of law, a disposition made by will or codicil executed before the commencement of this Part shall not be treated for the purposes of this section as made on or after that date by reason only that the will or codicil is confirmed by a codicil executed on or after that date.

Annotations

Amendments:

F2 Substituted (1.11.2010) by *Adoption Act 2010* (21/2010), s. 172(b) and (c), S.I. No. 511 of 2010.

Amendment of section 3 of the Act of 1965.

28.—Section 3 of the Act of 1965 is hereby amended—

(a) by the insertion in subsection (1) after the definition of “an intestate” of the following:

“‘issue’ shall be construed in accordance with section 4A (inserted by the *Status of Children Act, 1987*);”,

and

(b) by the insertion of the following subsection after subsection (1):

“(1A) In this Act a reference, however expressed, to a person whose parents have married or have not married each other shall be construed in accordance with *section 4* of the *Status of Children Act, 1987*.”.

Succession rights. **29.**—The Act of 1965 is hereby amended by the insertion after section 4 of the following section:

“4A.—(1) In deducing any relationship for the purposes of this Act, the relationship between every person and his father and mother shall, subject to section 27A of this Act (inserted by the Act of 1987), be determined in accordance with *section 3* of the Act of 1987, and all other relationships shall be determined accordingly.

(2) Where a person whose father and mother have not married each other dies intestate, he shall be presumed not to have been survived by his father, or by any person related to him through his father, unless the contrary is shown.

(3) The reference in section 75(1) to Part VI and the reference in the said section 75(1) to the foregoing provisions of the said Part VI shall, in relation to an instrument *inter vivos* made, or a will coming into operation, after the commencement of *Part V* of the Act of 1987, be construed as including references to this section.

(4) This section is without prejudice to section 26 (which, as construed in accordance with *section 27 (3)* of the Act of 1987, relates to the property rights of adopted persons) of the Adoption Act, 1952.

(5) This section shall not affect any rights under the intestacy of a person dying before the commencement of *Part V* of the Act of 1987.

(6) In this section ‘the Act of 1987’ means the *Status of Children Act, 1987*.”.

Entitlement to grant of probate or administration. **30.**—The Act of 1965 is hereby amended by the insertion after section 27 of the following section:

“27A.—For the purpose of the application of section 26 or 27 in respect of the estate of a deceased person, the deceased shall be presumed, unless the contrary is shown, not to have been survived by any person related to him whose parents have not married each other or by any person whose relationship with the deceased is deduced through a person whose parents have not married each other.”.

Amendment of section 117 of the Act of 1965. **31.**—Section 117 of the Act of 1965 is hereby amended by the insertion of the following subsection after subsection (1):

“(1A) (a) An application made under this section by virtue of *Part V* of the *Status of Children Act, 1987*, shall be considered in accordance with subsection (2) irrespective of whether the testator executed his will before or after the commencement of the said *Part V*.

(b) Nothing in paragraph (a) shall be construed as conferring a right to apply under this section in respect of a testator who dies before the commencement of the said *Part V*.”.

Repeals relating to property rights.

32.—The provisions of the following enactments are hereby repealed to the extent specified:

- (a) in the Provident Nominations and Small Intestacies Act, 1883, section 8;
- (b) in the Savings Banks Act, 1887, the words “, or in case of any illegitimacy of the deceased person or his children, to or among such person or persons as may be directed by the said regulations,” in section 3 (2);
- (c) in the Superannuation Act, 1887, the words “, or in case of the illegitimacy of the deceased person or his children, to or among such persons as the department may think fit,” in section 8;
- (d) in the Industrial and Provident Societies Act, 1893, section 27 (2);
- (e) in the Friendly Societies Act, 1896, section 58 (2);
- (f) in the Legitimacy Act, 1931, sections 1(3) and 9;
- (g) in the Local Government (Superannuation) Act, 1956, the words “or, in the case of the illegitimacy of the deceased, to or among such persons as the local authority think fit,” in section 61 (1) (e);
- (h) in the Act of 1965, section 110.

PART VI

DECLARATIONS OF PARENTAGE

Definitions (*Part VI*).

33.—In this Part—

F3[‘adopted person’ has the same meaning as in section 3(2)(b) of this Act;]

“the Court” means the Circuit Court;

“prescribed” means prescribed by rules of court.

Annotations

Amendments:

F3 Inserted (18.01.2016) by *Children and Family Relationships Act 2015* (9/21015), s. 79, S.I. No. 12 of 2016.

F4 Inserted by *Children and Family Relationships Act 2015* (9/2015), s. 79, not commenced as of date of revision.

Modifications (not altering text):

C1 Prospective affecting provision: section amended by *Children and Family Relationships Act 2015* (9/2015), s. 79, partially not commenced as of date of revision.

F4[‘Act of 2015’ means the *Children and Family Relationships Act 2015*;

...

‘donor-conceived child’ has the same meaning as in Part 2 of the Act of 2015;

‘parent’ includes a second parent;

‘second parent’, in relation to a donor-conceived child, means a person who is a parent of the child under section 5(1)(b) of the Act of 2015, other than a person who is a parent under that section by virtue of a declaration obtained under section 21 or 22 of that Act.]

Jurisdiction and venue (*Part VI*).

34.—(1) The Court shall have jurisdiction to grant a declaration under this Part.

(2) The jurisdiction conferred on the Court by this section shall be exercised by the judge of the circuit where any party to the proceedings ordinarily resides or carries on any profession, business or occupation or, where no party to the proceedings ordinarily resides or carries on any profession, business or occupation in the State, by a judge assigned to the Dublin Circuit.

(3) The jurisdiction conferred by this section is in addition to any other jurisdiction to grant a declaration of parentage or to make an order which has the effect of such a declaration.

Declaration of parentage.

35.—F5[(1) A person specified in subsection (1A) of this section may apply to the Court for a declaration under this section that—

(a) a person named in the application is or is not the mother,

(b) a person named in the application is or is not the father or second parent, or

(c) 2 persons named in the application are or are not the parents,

of a person (other than a person who is an adopted person) named in the application (in this section referred to as the ‘person concerned’).]

F6[(1A) An application for a declaration under this section may be made, in relation to a person concerned, by—

(a) the person concerned,

(b) any person seeking a declaration that he or she is the mother, father or second parent of the person concerned, or

(c) any person seeking a declaration that he or she is not the mother, father or second parent of the person concerned.

(1B) Where an application for a declaration under this section is made by a person referred to in paragraph (b) or (c) of subsection (1A) of this section in relation to a person concerned, the person concerned shall be joined as a party to the proceedings.]

(2) An application may be made under *subsection (1)* of this section notwithstanding the fact that any person named in the application as the father or the mother or a parent, as the case may be, is not, or may not be, alive.

(3) F7[Where an application for a declaration under this section is made in relation to a person concerned who was not born in the State, the person making the application shall specify] in the application the reasons for seeking the declaration from the Court, and the Court shall refuse to hear or refuse to continue hearing, as the case may be, the application if at any stage it considers that there are no good and proper reasons for seeking the declaration.

(4) F8[...]

(5) On an application under this section the Court may at any stage of the proceedings, of its own motion or on the application of any party to the proceedings, direct that all necessary papers in the matter be sent to the Attorney General.

(6) Where on an application under this section the Attorney General requests to be made a party to the proceedings, the Court shall order that he shall be added as a party, and, whether or not he so requests, the Attorney General may argue before the Court any question in relation to the application which the Court considers necessary to have fully argued and take such other steps in relation thereto as he thinks necessary or expedient.

(7) The Court may direct that notice of any application under this section shall be given in the prescribed manner to such other persons as the Court thinks fit and where notice is so given to any person the Court may, either of its own motion or on the application of that person or any party to the proceedings, order that that person shall be added as a party to those proceedings.

F9[(8) Where on an application under subsection (1) of this section it is proved on the balance of probabilities that—

- (a) a person named in the application is or is not the mother,
- (b) a person so named is or is not the father or second parent, or
- (c) persons so named are or are not the parents,

of the person concerned, the Court shall make the declaration accordingly.]

(9) Any declaration made under this section shall be in a form to be prescribed and shall be binding on the parties to the proceedings and any person claiming through a party to the proceedings, and where the Attorney General is made a party to the proceedings the declaration shall also be binding on the State.

Annotations

Amendments:

- F5** Substituted (18.01.2016) by *Children and Family Relationships Act 2015* (9/2015), s. 80(a), S.I. No. 12 of 2016, other than in so far as subs. (1)(b) relates to a second parent.
- F6** Inserted (18.01.2016) by *Children and Family Relationships Act 2015* (9/2015), s. 80(b), S.I. No. 12 of 2016, other than in so far as subss. (1A), (1B) relate to a second parent.
- F7** Substituted (18.01.2016) by *Children and Family Relationships Act 2015* (9/2015), s. 80(c), S.I. No. 12 of 2016.
- F8** Deleted (18.01.2016) by *Children and Family Relationships Act 2015* (9/2015), s. 80(d), S.I. No. 12 of 2016.
- F9** Substituted (18.01.2016) by *Children and Family Relationships Act 2015* (9/2015), s. 80(e), S.I. No. 12 of 2016, other than in so far as subs. (8) relates to a second parent.

Editorial Notes:

- E9** Note that certain amendments commenced only in part, see F-notes above.

Supplementary provisions to section 35.

36.—(1) Rules of court may provide that any application for a declaration under section 35 of this Act shall contain such information as may be prescribed.

(2) Where any costs are incurred by the Attorney General in connection with any application for a declaration under section 35 of this Act, the Court may make such order as it considers just as to the payment of those costs by other parties to the proceedings.

(3) No proceedings on an application under section 35 of this Act shall affect any final judgment or decree already pronounced or made by any court of competent jurisdiction.

(4) On the hearing of an application under section 35 of this Act the Court may direct that the whole or any part of the proceedings shall be heard otherwise than in public, and an application for a direction under this subsection shall be so heard unless the Court otherwise directs.

(5) Where a declaration is made by the Court under *section 35* of this Act, notification of that decision shall be given to an tArd-Chláraitheoir and shall be given in such manner as may be prescribed.

Annotations

Modifications (not altering text):

- C2** Application of section restricted (31.03.2005) by *Civil Liability and Courts Act 2004* (31/1004), s. 40, S.I. No. 544 of 2004; as amended (1.08.2008) by *Civil Law (Miscellaneous Provisions) Act 2008* (14/2008), s. 31, S.I. No. 274 of 2008.

Proceedings heard otherwise than in public.

40.—...

(2) For the purposes of this section each of the following shall be a “relevant enactment”— ...

(e) section 36 of the Status of Children Act 1987;

...

(3) Nothing contained in a relevant enactment shall operate to prohibit—

(a) the preparation by a barrister at law or a solicitor or a person falling within any other class of persons specified in regulations made by the Minister and publication of a report of proceedings to which the relevant enactment relates, or

(b) the publication of the decision of the court in such proceedings,

in accordance with rules of court, provided that the report or decision does not contain any information which would enable the parties to the proceedings or any child to which the proceedings relate to be identified and, accordingly, unless in the special circumstances of the matter the court, for reasons which shall be specified in the direction, otherwise directs, a person referred to in *paragraph (a)* may, for the purposes of preparing [such a report—

(i) attend the proceedings, and

(ii) have access to any relevant documents,

subject to any directions the court may give in that behalf.]

(4) Nothing contained in a relevant enactment shall operate to prohibit a party to proceedings to which the enactment relates from supplying copies of, or extracts from, orders made in the proceedings to such persons and in accordance with such conditions (if any) as may be prescribed by order of the Minister.

(5) Nothing contained in a relevant enactment shall operate to prohibit a party to proceedings to which the enactment relates from being accompanied, in such proceedings, in court by another person subject to the approval of the court and any directions it may give in that behalf.

(6) Nothing contained in an enactment that prohibits proceedings to which the enactment relates from being heard in public shall operate to prohibit the production of a document prepared for the purposes or in contemplation of such proceedings or given in evidence in such proceedings, to—

(a) a body or other person when it, or he or she, is performing functions under any enactment consisting of the conducting of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter, or

(b) such body or other person as may be prescribed by order made by the Minister, when the body or person concerned is performing functions consisting of the conducting of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter as may be so prescribed.

(7) Nothing contained in an enactment that prohibits proceedings to which the enactment relates from being heard in public shall operate to prohibit the giving of information or evidence given in such proceedings to—

(a) a body or other person when it, or he or she, is performing functions under any enactment consisting of the conducting of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter, or

(b) such body or other person as may be prescribed by order made by the Minister, when the body or person concerned is performing functions consisting of the conducting of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter as may be so prescribed.

(8) A court hearing proceedings under a relevant enactment shall, on its own motion or on the application of one of the parties to the proceedings, have discretion to order disclosure of documents, information or evidence connected with or arising in the course of the proceedings to third parties if such disclosure is required to protect the legitimate interests of a party or other person affected by the proceedings.

(9) A hearing, inquiry or investigation referred to in *subsection (6) or (7)* shall, in so far as it relates to a document referred to in *subsection (6)* or information or evidence referred to in *subsection (7)*, be conducted otherwise than in public and no such document, information or evidence shall be published.

(10) This section shall apply to proceedings brought, and decisions of a court made, whether before or after the commencement of this section.

[(11) In subsection (3), 'relevant documents', in relation to any proceedings referred to in that subsection—

(a) subject to paragraph (b), means—

(i) the petition, summons or other originating document in the proceedings,

(ii) pleadings and other documents (including the terms of settlement, if any) produced to or lodged with the court, or included in the book of pleadings, in the course of the proceedings, and

(iii) any order made by the court in the proceedings,

(b) does not include any document the contents of which are expressed to be without prejudice or in terms having a like effect.]

Editorial Notes:

E10 Section defined as "relevant enactment" by *Civil Liability and Courts Act 2004* (31/2004), s. 39; as amended (11.01.2014) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 4(b), S.I. No. 5 of 2014.

PART VII

BLOOD TESTS IN DETERMINING PARENTAGE IN CIVIL PROCEEDINGS

Definitions (*Part VII*). **37.**—In this Part—

F10['Act of 2015' means the Children and Family Relationships Act 2015;]

F11[...]

F11[...]

F12['bodily sample' means any of the following taken or to be taken from a person for the purpose of a DNA test:

(a) a swab from the mouth;

(b) a sample of saliva or hair (other than pubic hair);

(c) a blood sample;

F10[‘DAHR procedure’ has the same meaning as in section 20 of the Act of 2015;]

‘DNA’ means deoxyribonucleic acid;

‘DNA test’ means any test carried out under this Part with the object of examining and analysing a bodily sample in order to derive, in relation to the person from whom the sample is taken, information comprising a set of identification characteristics of that person’s DNA;]

F10[‘donor-conceived child’ has the same meaning as in Part 2 of the Act of 2015;]

“excluded” means excluded subject to the occurrence of mutation;

“the Minister” means the Minister for Justice.

F10[‘parent’ means—

(a) in relation to a person who is not a donor-conceived child, his or her mother or father, and

(b) in relation to a donor-conceived child, a person who—

(i) provided a gamete that was used in the DAHR procedure that resulted in the child’s birth, and

(ii) is the mother of the child or is a parent of the child under section 5(1)(b) of the Act of 2015;]

Annotations

Amendments:

F10	Inserted (4.05.2020) by <i>Children and Family Relationships Act 2015</i> (9/2015), s. 81(b), S.I. No. 624 of 2019.
F11	Deleted (18.01.2016) by <i>Children and Family Relationships Act 2015</i> (9/2015), s. 81(a), S.I. No. 12 of 2016.
F12	Inserted (18.01.2016) by <i>Children and Family Relationships Act 2015</i> (9/2015), s. 81(b), S.I. No. 12 of 2016.

Direction by court on blood tests.

38.—(1) In any civil proceedings before a court in which the parentage of any person is in question, the court may, either of its own motion or on an application by any party to the proceedings, give a direction for the use of F13[DNA tests] for the purpose of assisting the court to determine whether a person named in the application or a party to the proceedings, as the case may be, is or is not a parent of the person whose parentage is in question, and for the taking, within a period to be specified in the direction, of F13[bodily samples] from the person whose parentage is so questioned, from any person alleged to be a parent of that person and from any other person who is a party to the proceedings, or from any of those persons.

(2) Where, on the application of any party to proceedings—

(a) a direction is given under *subsection (1)* of this section, such party shall pay the costs of taking and testing F13[bodily samples] for the purpose of giving effect to the direction (including any expenses reasonably incurred by any person in taking any steps required of him for that purpose) and of making a report to the court under *section 40 (2)* of this Act,

(b) such party obtains, under *section 40 (4)* of this Act, a written statement explaining or supplementing any statement made in a report under the said *section 40 (2)*, that party shall, subject to any direction by the court, pay the

costs (if any) of obtaining the written statement (including any expenses reasonably incurred by any person in taking any steps required by him for that purpose),

but any amount paid or to be paid by virtue of this subsection shall be treated as costs incurred by such party in the proceedings.

(3) The court may at any time revoke or vary a direction previously given by it under this section.

Annotations

Amendments:

F13 Substituted (18.01.2016) by *Children and Family Relationships Act 2015* (9/2015), s. 82, S.I. No. 12 of 2016.

Consent to, and taking of, blood samples.

39.—(1) Subject to *subsection (3)* of this section, a F14[bodily sample] which is required to be taken from any person for the purpose of giving effect to a direction under *section 38* of this Act shall not be taken from that person except with his consent.

(2) Where for the purpose of giving effect to a direction under *section 38* of this Act a F14[bodily sample] is required to be taken from a person who is not of full age and the court considers that he is in the circumstances capable of giving or refusing the necessary consent, any consent given or refused by him shall be as effective as it would be if he were of full age.

(3) For the purpose of giving effect to a direction under *section 38* of this Act—

(a) a F14[bodily sample] may be taken from a minor, other than one to whom *subsection (2)* of this section relates, if the person having charge of or control over the minor consents:

Provided that where more than one person has charge of or control over the minor and they disagree as to whether consent should be given, the minor shall be treated as not having consented;

(b) a F14[bodily sample] may be taken from a person of full age who is, in the opinion of the court, incapable of understanding the nature and purpose of F14[DNA tests] if the person having charge of or control over him consents and any medical practitioner in whose care he may be has certified that the taking of a F14[bodily sample] from him will not be prejudicial to his proper care and treatment:

Provided that where more than one person has charge of or control over the person concerned and they disagree as to whether consent should be given, the person concerned shall be treated as not having consented.

Annotations

Amendments:

F14 Substituted (18.01.2016) by *Children and Family Relationships Act 2015* (9/2015), s. 83, S.I. No. 12 of 2016.

Blood tests and reports.

40.—(1) Where F15[bodily samples] are taken for the purpose of giving effect to a direction of a court under *section 38 (1)* of this Act, they shall be tested—

(a) under the control of such person (including a person to whom *subsection (6)* of this section relates) as all the parties to the proceedings before the court agree to, or

(b) where the parties are not in agreement,

(i) under the control of such person to whom *subsection (6)* of this section relates, or

(ii) under the control of such other person,

as the court shall direct.

(2) The person under whose control F15[bodily samples] are to be tested by virtue of *subsection (1)* of this section shall make to the court by which the direction was given a report in which he shall state—

(a) in relation to each person from whom F15[bodily samples] were so taken, the results of the tests, and

(b) in relation to each person (other than the person whose parentage is in question) from whom F15[bodily samples] were so taken—

(i) whether the person to whom the report relates is or is not excluded by the results from being a parent of the person whose parentage is in question, and

(ii) if the person to whom the report relates is not so excluded, the value, if any, of the results in determining whether that person is a parent of the person whose parentage is in question,

and the report shall be received by the court as evidence in the proceedings of the matters stated therein.

(3) A report under *subsection (2)* of this section shall be in the form prescribed by regulations made under *section 41* of this Act.

(4) Where a report has been made to a court under *subsection (2)* of this section, any party may, with the leave of the court, or shall, if the court so directs, obtain from the person who made the report a written statement explaining or supplementing any statement made in the report, and that statement shall be deemed for the purposes of this section (other than *subsections (3)* and *(6)*) to form part of the report made to the court.

(5) Where a direction is given under *section 38 (1)* of this Act in any proceedings and the F15[bodily samples] to which the direction relates have been tested by virtue of this section, a party to the proceedings, unless the court otherwise directs, shall not be entitled to call as a witness the person under whose control the F15[bodily samples] were tested for the purpose of giving effect to that direction, or any person by whom any thing necessary for the purpose of enabling those tests to be carried out was done, unless within 14 days after receiving a copy of the report he serves notice on the other parties to the proceedings, or on such of them as the court may direct, of his intention to call that person as a witness and, where that person is so called, the party who called him shall be entitled to cross-examine him.

(6) (a) The Minister may, for the purpose of *subsection (1)* of this section, appoint a person or category of persons under whose control F15[DNA tests] may be carried out.

(b) The Minister may at any time amend or revoke an appointment under this subsection but such amendment or revocation shall not affect any F15[DNA test] carried out, or the testing of any F15[bodily sample] for the purpose of this Part which was submitted for testing, before such amendment or revocation.

- (c) Notice of an appointment, or the amendment or revocation of any appointment, shall be published by the Minister in the *Iris Oifigiúil*.

Annotations

Amendments:

- F15** Substituted (18.01.2016) by *Children and Family Relationships Act 2015* (9/2015), s. 84, S.I. No. 12 of 2016.

Regulations for purpose of giving effect to this Part.

41.—(1) The Minister may make regulations for the purpose of giving effect to this Part.

(2) Without prejudice to the generality of *subsection (1)* of this section, regulations made under this section may in particular—

- (a) regulate the taking, identification and transport of F16[bodily samples];
- (b) require the production at the time when a F16[bodily sample] is to be taken of such evidence of the identity of the person from whom it is to be taken as may be prescribed by the regulations;

F16[(c) require any person from whom a bodily sample that is a blood sample is to be taken or, in such cases as may be prescribed by the regulations, such other person as may be so prescribed, to state in writing whether he had during such period as may be specified in the regulations—

- (i) suffered from any such illness as may be so specified, or
- (ii) received a transfusion of blood or such other medical treatment as may be so specified;]

(d) prescribe the form of any report to be made to a court under this Part.

(3) Every regulation made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Annotations

Amendments:

- F16** Substituted (18.01.2016) by *Children and Family Relationships Act 2015* (9/2015), s. 85, S.I. No. 12 of 2016.

Editorial Notes:

- E11** Power pursuant to section exercised (5.09.1988) by *Blood Tests (Parentage) Regulations 1988* (S.I. No. 215 of 1988).

Failure to comply with direction on blood tests.

42.—(1) Where a court gives a direction under *section 38* of this Act and any person fails to take any step required of him for the purpose of giving effect to the direction, the court may draw such inferences, if any, from that fact as appear proper in the circumstances.

(2) Where in proceedings on an application under *section 35* of this Act a court gives a direction under *section 38* of this Act for the taking of F17[bodily samples] then, if any person named in the direction fails, within such period as may be specified by the court, to take any step required of him for the purpose of giving effect to the direction, the court may dismiss the application.

(3) Where in any civil proceedings in which the parentage of any person falls to be determined by the court hearing those proceedings there is, by virtue of *section 46* of this Act, a presumption of paternity relating to such person, then if—

(a) a direction is given under *section 38* of this Act in those proceedings, and

(b) any party who is claiming any relief in the proceedings and who for the purpose of obtaining that relief is entitled to rely on the presumption fails to take any step required of him for the purpose of giving effect to the direction,

the court may adjourn the hearing for such period as it thinks fit to enable that party to take that step, and if at the end of that period he has failed without reasonable cause to take it the court may, without prejudice to *subsection (1)* of this section, dismiss his claim for relief notwithstanding the absence of evidence to rebut the presumption.

(4) Where any person named in a direction under *section 38* of this Act fails to consent to the taking of a F17[bodily sample] from himself or from any person named in the direction whom he has charge of or control over, he shall be deemed for the purposes of this section to have failed to take a step required of him for the purpose of giving effect to the direction.

Annotations

Amendments:

F17 Substituted (18.01.2016) by *Children and Family Relationships Act 2015* (9/2015), s. 86, S.I. No. 12 of 2016.

Penalty for personation for blood test purposes.

43.—If, for the purpose of providing a F18[bodily sample] for a test under *section 40* of this Act, any person personates another or proffers another knowing him not to be the person named in the direction, he shall be liable—

(a) on summary conviction, to F18[a class C fine] or to imprisonment for a term not exceeding 12 months, or to both;

(b) on conviction on indictment, to F18[a fine not exceeding €5,000] or to imprisonment for a term not exceeding two years, or to both.

Annotations

Amendments:

F18 Substituted (18.01.2016) by *Children and Family Relationships Act 2015* (9/2015), s. 87, S.I. No. 12 of 2016.

PART VIII

PRESUMPTIONS AND EVIDENTIAL PROVISIONS

Abrogation of presumption of legitimacy or illegitimacy.

44.—Any presumption of law as to the legitimacy or illegitimacy of any person is hereby abrogated.

Finding of parentage as evidence in other proceedings.

45.—(1) Where, either before or after the commencement of this Part, a person has been found or adjudged to be a parent of a child in any civil proceedings before a court relating to guardianship of infants or maintenance (including affiliation) or under section 215 of the Social Welfare (Consolidation) Act, 1981, such a finding or adjudication shall, notwithstanding the fact that that person did or did not offer any defence to the allegation of parentage or was or was not a party to those proceedings, be admissible in evidence in any subsequent civil proceedings for the purpose of proving that that person is or, where not alive, was a parent of that child:

Provided that no finding or adjudication as aforesaid other than a subsisting one shall be admissible in evidence by virtue of this section.

(2) Where evidence that a person has been found or adjudged to be a parent of a child has been submitted in subsequent proceedings by virtue of *subsection (1)* of this section, then—

(a) that person shall be taken to be or, where he is not alive, to have been a parent of that child, unless the contrary is proved on the balance of probabilities, and

(b) in relation to the prior court proceedings the contents of any document which was before that court, or which contains any pronouncement of that court, shall, without prejudice to the submission of any other admissible evidence for the purpose of identifying the facts on which the finding or adjudication was based, be admissible for that purpose.

(3) Where in subsequent civil proceedings the contents of any document are admissible in evidence by virtue of *subsection (2)* of this section, a copy of that document, or of the material part thereof, purporting to be certified or otherwise authenticated by or on behalf of the court or authority having custody of that document shall be admissible in evidence and shall be taken to be a true copy of that document or part unless the contrary is shown.

Presumptions of paternity and non-paternity.

46.—(1) Where a woman gives birth to a child—

(a) during a subsisting marriage to which she is a party, or

(b) within the period of ten months after the termination, by death or otherwise, of a marriage to which she is a party,

then the husband of the marriage shall be presumed to be the father of the child unless the contrary is proved on the balance of probabilities.

F19[(2) Notwithstanding subsection (1) of this section, where a married woman, being a woman who is living apart from her husband, gives birth to a child more than ten months after the date of her separation from her husband, then her husband shall be presumed not to be the father of the child unless the contrary is proved on the balance of probabilities.]

F20[(2A) For the purposes of subsection (2) of this section, the date of the separation of a married woman from her husband shall be deemed to be—

(a) the date on which a decree of divorce *a mensa et thoro* was granted in relation to them,

(b) the date on which a decree of judicial separation was granted in relation to them,

(c) the date on which a deed of separation was executed in relation to them,

- (d) the date on which a separation agreement was entered into by them, or
- (e) such other date as may be established by the woman.]

(3) Notwithstanding *subsection (1)* of this section, where—

F19[(a) the birth of a child is registered in a register maintained under the Civil Registration Act 2004, and]

(b) the name of a person is entered as the father of the child on the register so maintained,

then the person whose name is so entered shall be presumed to be the father of the child unless the contrary is proved on the balance of probabilities.

(4) For the purposes of *subsection (1)* of this section “subsisting marriage” shall be construed as including a voidable marriage and the expression “the termination, by death or otherwise, of a marriage” shall be construed as including the annulment of a voidable marriage.

F20[(5) In this section, ‘decree of judicial separation’ means a decree under section 3 of the Judicial Separation and Family Law Reform Act 1989.]

Annotations

Amendments:

- F19** Substituted (18.01.2016) by *Children and Family Relationships Act 2015* (9/2015), s. 88(a) and (c), S.I. No. 12 of 2016.
- F20** Inserted (18.01.2016) by *Children and Family Relationships Act 2015* (9/2015), s. 88(b) and (d), S.I. No. 12 of 2016.

Admissibility of certain evidence. **47.—**(1) The evidence of a husband or wife shall be admissible in any proceedings to prove that marital intercourse did or did not take place between them during any period.

(2) The proviso to section 3 of the Evidence Further Amendment Act, 1869, is hereby repealed.

PART IX

REGISTRATION AND RE-REGISTRATION OF BIRTHS

Re-registration of birth after declaration of parentage. **48.—**F21[...]

Annotations

Amendments:

- F21** Repealed (5.12.2005) by *Civil Registration Act 2004* (3/2004), s. 4 and sch. 2, S.I. No. 764 of 2005, subject to transitional provisions in s. 5.

Editorial Notes:

- E12** The *Civil Registration Act 2004* (3/2004), s. 23, S.I. No. 764 of 2005, makes provision (5.12.2005) for re-registration of birth and inclusion of the name of the father.
- E13** Previous affecting provision: section amended (1.10.1997) by *Registration of Births Act 1996* (36/1996), s. 6(2), S.I. No. 45 of 1997.

Amendment of Births and Deaths Registration Act (Ireland), 1880.

49.—The Births and Deaths Registration Act (Ireland), 1880, is hereby amended by the substitution for section 7 of the following sections:

“Registration of father where parents not married.

7.—(1) In the case of a child whose parents were not married to each other at the date of his birth or at any time during the period of ten months before his birth, no person shall as father of the child be required to give information concerning the birth.

(2) The registrar shall not enter in the register the name of a person as father of a child to whom subsection (1) of this section relates except—

(a) at the joint request of the mother and the person acknowledging himself to be the father of the child, or

(b) at the request of the mother on production of—

(i) a declaration in the prescribed form made by the mother stating that that person is the father of the child, and

(ii) a statutory declaration made by that person acknowledging himself to be the father of the child,

or

(c) at the request of that person on production of—

(i) a declaration in the prescribed form by that person acknowledging himself to be the father of the child, and

(ii) a statutory declaration made by the mother stating that that person is the father of the child,

or

(d) at the request of the mother or that person, which shall in either case be made in writing, on production of a certified copy of any court order in respect of proceedings to which *section 45* of the *Status of Children Act, 1987*, relates, naming that person as the father of the child.

(3) Where the mother of a child to whom subsection (1) of this section relates was married at the date of the birth of the child or at some time during the period of ten months before that birth, the registrar shall not, in respect of a request made by virtue of paragraph (a), (b) or (c) of subsection (2) of this section, register the name of a person as father except, in addition to the said paragraph (a), (b) or (c) being complied with, on production of—

(a) a statutory declaration by the husband of the mother stating that he is not the father of the child, or

(b) a statutory declaration by the mother stating that she has been living apart from her husband under a decree of divorce *a mensa et thoro* or a deed of separation, as the case may be, for more than ten months before the birth of the child.

(4) On registration of the birth of a child under this section, the register shall be signed by—

- (a) the registrar,
- (b) the mother of the child, where she has made a request for registration in accordance with subsection (2) of this section, and
- (c) the person acknowledging himself to be the father of the child, where he has made a request for registration in accordance with subsection (2) of this section.

(5) Where a person acknowledging himself to be the father of a child (being a child to whom subsection (1) of this section relates) makes a request to the registrar in accordance with subsection (2) (c) or (2) (d) of this section, he shall be treated as a qualified informant concerning the birth of the child for the purposes of this Act.

Re-registration of birth so as to show who is father.

7A.—(1) Where the birth of a child (being a child whose parents were not married to each other at the date of his birth or at any time during the period of ten months before his birth) has been registered under this Act, but no person has been registered as the child's father, the registrar shall re-register the birth so as to show the name of a person as father—

- (a) at the joint request of the mother and that person (being a person who acknowledges himself to be the father of the child), or
- (b) at the request of the mother on production of—
 - (i) a declaration in the prescribed form made by the mother stating that that person is the father of the child, and
 - (ii) a statutory declaration made by that person acknowledging himself to be the father of the child,
 or
- (c) at the request of that person on production of—
 - (i) a declaration in the prescribed form by that person acknowledging himself to be the father of the child, and
 - (ii) a statutory declaration made by the mother stating that that person is the father of the child,
 or
- (d) at the request of the mother or that person, which shall in either case be made in writing, on production of a certified copy of any court order in respect of proceedings to which *section 45* of the *Status of Children Act, 1987*, relates, naming that person as the father of the child,

but no birth shall be re-registered under this section except in the prescribed manner and with the authority of an tArd-Chláraitheoir.

(2) Where the mother of a child to whom subsection (1) of this section relates was married at the date of the birth of the child or at some time during the period of ten months before that birth, the registrar shall not, in respect of a request made by virtue of paragraph (a), (b) or (c) of the said subsection (1), re-register the birth so as to show the name of a person as father except, in addition to the said paragraph (a), (b) or (c) being complied with, on production of—

- (a) a statutory declaration by the husband of the mother stating that he is not the father of the child, or

(b) a statutory declaration by the mother stating that she has been living apart from her husband under a decree of divorce *a mensa et thoro* or a deed of separation, as the case may be, for more than ten months before the birth of the child.

(3) On re-registration of the birth of a child under this section, the register shall be signed by—

(a) the registrar,

(b) the mother of the child, where she has made a request for re-registration in accordance with subsection (1) of this section, and

(c) the person acknowledging himself to be the father of the child, where he has made a request for re-registration in accordance with subsection (1) of this section.”.

Annotations

Editorial Notes:

- E14** Previous affecting provision: application of *Births and Deaths Registration (Ireland) Act 1880* (43 & 44 Vict. c. 13) as amended above was extended to apply to stillbirths as to live births (1.01.1995) by *Stillbirths Registration Act 1994* (1/1994), s. 5, S.I. No. 97 of 1994; repealed (5.12.2004) by *Civil Registration Act 2004* (3/2004), s. 4 and sch. 2, S.I. No. 764 of 2005.
- E15** Previous affecting provision: procedure for registration of father of stillborn child under *Births and Deaths Registration Act (Ireland) 1880* (43 & 44 Vict. c. 13), ss. 7 and 7A provided (1.01.1995) by *Registration of Stillbirths Regulations 1994* (S.I. No. 426 of 1994); repealed (5.12.2004) by *Civil Registration Act 2004* (3/2004), s. 4 and sch. 2, S.I. No. 764 of 2005.
- E16** Previous affecting provision: procedure for registration of father under *Births and Deaths Registration Act (Ireland) 1880* (43 & 44 Vict. c. 13), ss. 7 and 7A provided (14.06.1988) by *Registration of Births Regulations 1988* (S.I. No. 123 of 1988) as amended (15.10.2002) by *Registration of Births (Amendment) Regulations 2002* (S.I. No. 493 of 2002); repealed (5.12.2004) by *Civil Registration Act 2004* (3/2004), s. 4 and sch. 2, S.I. No. 764 of 2005.

Construction and collective citation (*Part IX*).

50.—The Births and Deaths Registration Acts, 1863 to 1972, and this Part shall be construed together as one and may be cited together as the Births and Deaths Registration Acts, 1863 to 1987.