

Illegitimacy

In September 1982, the Commission published its Report on [*Illegitimacy \(LRC 4-1982\)*](#) as part of its First Programme of Law Reform.

The basic proposal of the Report is that legislation should remove the concept of illegitimacy from the law and equalize the rights of children born outside marriage with those of children born within marriage. The Report contains a number of recommendations regarding proof of parenthood:

- (1) There would be a rebuttable presumption of the paternity of the husband of a child's mother in specified circumstances.
- (2) Birth certificates would constitute rebuttable evidence of paternity
- (3) Registration of the name of a man as father of a child would establish a rebuttable presumption of paternity in certain specified circumstances. Appropriate safeguards in relation to the registration process are recommended.
- (4) Proceedings for a court declaration of parenthood would be provided for. Such proceedings would be capable of being brought at any time during the joint lives of the alleged parent and child, and, where either dies, within six years of the death where a share in the estate of the deceased is being claimed.

It is proposed that all children, irrespective of the marital status of their parents, should be entitled to apply to the Court for an order for maintenance against either or both of their parents. In making an order for maintenance for or on behalf of a child, the Court should, it is proposed, be empowered to give a direction for a capital payment or payments. At present only periodical payments may be ordered.

The Reports recommends that children born outside marriage should have the same succession rights in respect of their parents' estates as those born within marriage and that the same rule should be applied in respect of the estates of their other relatives. It also recommends that the parents and other relatives of illegitimate children should be entitled to succeed to the estates of children born outside marriage in the same way as they would if the children had been born within marriage. Furthermore, it is proposed that the various rules as to the construction and validity of provisions in wills, deeds, and other instruments that discriminate against children born outside marriage should be abolished.

A number of amendments of the law in regard to the guardianship of infants as contained in the *Guardianship of Infants Act 1964* are recommended. Of the two main amendments, the first is that both parents of a child should be the joint guardians, whether the child is born within or outside marriage. The second amendment would enable the Court to make an order depriving a parent of the custody of a child and the power to exercise other guardianship rights where it was satisfied that the best interests of the child required this and that it would be proper to make such an order having regard to those interests and to the rights and interests of all other persons concerned.

The Report also recommends that section 22 of the *Family Law (Maintenance of Spouses and Children) Act 1976* should be amended so as to permit not only a spouse but also a child of any person, whether that person is or is not married, to apply to the Court for a barring order.

Though the Report examines in the context of the abolition of the status of illegitimacy the question of artificial insemination and the law of adoption, the Commission makes no recommendations in relating to these matters.

Draft Legislation in Report

The Report includes for draft legislative provisions.

Information on Implementation

Recommendations of the Commission were implemented by the *Status of Children Act 1987*. See also Report on [*Legal Aspects of Family Relationships \(LRC 101-2010\)*](#), and the *Children and Family Relationships Act 2015, Part 4*.