

Memorandum by the Minister of Justice1. An act of social justice.

A Bill is attached which amends the Civil Code. As stated in the "Objects and Reasons" this Bill is intended "as an Act of Social Justice for illegitimate children in accordance with modern trends and public conscience".

2. Surname of illegitimate child acknowledged by father.

The first major innovation introduced by the Bill refers to the surname of the illegitimate child. As the law now stands, an illegitimate child, even though acknowledged by the father, may not assume his surname, he may assume the surname of the mother.

This humiliating position is now being done away with. According to clause 2 of the Bill "an illegitimate child takes the surname of the parent who has acknowledged him or that of the father, if he has been acknowledged by both parents".

The provisions of this section is made to apply:-

- (a) to such persons as shall be acknowledged or born on or after the 1st January 1966; and
- (b) with regard to the taking of the father's surname, to such persons, acknowledged by the father before the 1st January 1966, as shall be declared by the Court to have always borne the surname of the father. This extension is being introduced in view of the fact that, notwithstanding and indeed in spite of the provisions of the existing law, many illegitimate children acknowledged by their father are in actual fact using his surname. Provided this is proven to the satisfaction of the Court, such persons may take advantage of the new provisions being introduced.

3. Declaration of paternity by Court judgment.

A declaration of paternity by a judgment of the Court shall have the same effect as regards the surname to be borne by the illegitimate child as an acknowledgment.

4. Amendment as to maintenance and education.

This Bill is intended not only to render justice to the status of illegitimate children as aforesaid, but also to make some drastic, though fully justified, changes in the provisions relating to maintenance due to illegitimate children.

As the law now stands, "the father is bound to maintain and educate according to the condition of the mother, the illegitimate child whom he has acknowledged".

Worse still is the position of the illegitimate child whose paternity is declared by judgment of the Court; as the law now stands, the father "shall only be bound to supply the child with what is necessary in respect of food, clothing and habitation according to the condition of the mother".

The Bill does away with this distinction between children acknowledged by the father and children whose paternity has been declared by judgment of the Court, and imposes on the father the duty to maintain and educate his child according to his means.

This amendment does away with the concept of maintaining an illegitimate child according to the means of the mother.

There are other minor amendments resulting from this change of outlook in clauses 6 and 7 of the Bill.

5. Amendment as to succession.

The law of succession has also been slightly amended in that with regard to the estate of the father the portion saved to illegitimate children not acknowledged but whose paternity has been declared by a judgment of the Court, shall be determined with no regard being taken as to the condition of the mother.

6. New and abridged certificates of civil status.

This Bill envisages an important amendment to section 288 of the Code in that it provides for:-

- (1) two types of an abridged certificate of acts of civil status;
 - (2) a restriction on the granting by the Director of certificates containing a true a true copy in full of one or more registered acts;
 - (3) all corrections and annotations entered in the
- /margin.....

margin of the registers to be incorporated in the extracts.

This measure is intended to protect children legitimated "per subsequens matrimonium" and through the introduction of the shorter certificate, the illegitimate origin of children need no longer result.

In these certificates information which is deemed superfluous and at times embarrassing is not included.

7. Speedier and less expensive procedure for the correction of certain errors in acts of civil status.

The Bill also provides for a speedier and less expensive procedure for the correction of certain errors incurred in the drawing up and registration of acts of civil status.

8. Amendment of references to "British Consul"

The Civil Code in sections 320 and 342 provides that in cases of birth and death on board a vessel at sea, the master is to deliver to the British Consul a copy of the entry registering the birth or death when the vessel touches a foreign port.

In conformity with Malta's independence status the words "British Consul" are being substituted by the words "Diplomatic or consular representative of the Government of Malta or a person serving in the diplomatic consular or foreign service of any country which by arrangement with the Government of Malta has undertaken to represent that Government interest in that country or by a person authorised in that behalf by the Governor-General.

The wording is identical to that used in section 18 (g) of the Malta Citizenship Act.

The same substitution is being made in sections 716 (wills made at sea) and 2131 (contracts made outside these Islands).

Another amendment to which Hon. Ministers attention is particularly drawn with reference to the policy aspect thereof is that contained in clause 21 of

the Bill which substitutes for the words "some trustworthy person being a subject of His Majesty" the words "some trustworthy person being a citizen of Malta or other Commonwealth citizen".

Honourable Ministers are invited to recommend.

7th August, 1965.

L-ARKIVI NAZZJONALI TA' MALTA

A BILL
entitled

AN ACT further to amend the Civil Code, Cap. 23.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the House of Representatives of Malta, in this present Parliament assembled, and by the authority of the same, as follows:-

Short title and commencement. 1. This Act may be cited as the Civil Code (Amendment) Act, 1965, and shall be read and construed as one with the Civil Code, hereinafter referred to as "the principal law" and shall come into force on the 1st day of January, 1966.

Substitution of section 106 of the principal law. 2. For section 106 of the principal law there shall be substituted the following:

"Surname of illegitimate child. 106. (1) An illegitimate child takes the surname of the parent who has acknowledged him or that of the father if he has been acknowledged by both parents.

(2) The provisions of this section shall apply -

(a) to such persons as shall be acknowledged or born on or after the 1st day of January, 1966; and

(b) with regard to the taking of the surname of the father to such persons, acknowledged by the father before the 1st day of January, 1966, as shall be declared by the Court to have always borne the surname of the father:

Provided that such a declaration may be given on an action brought by way of writ of summons before Her Majesty's Court,

First/....

First Hall, or the Court of Magistrates of Judicial Police for the Islands of Gozo and Comino, as the case may be, against the Director of Public Registry and a curator to be appointed by the Court to represent any person interested.

(3) For the purposes of this section a declaration of paternity by a judgment of the Court shall have the same effect as an acknowledgment."

Amendment of section 107 of the principal law.

3. In subsection (1) of section 107 of the principal law for the words "the condition of the mother" there shall be substituted the words "his means".

Substitution of section 108 of the principal law.

4. For section 108 of the principal law there shall be substituted the following:-

"Where paternity is declared by judgment of the Court.

108. The provisions of section 107 shall apply to a person who has not acknowledged a child but whose paternity has been declared by a judgment of the Court."

Amendment of section 109 of the principal law.

5. Section 109 of the principal law shall be amended as follows:-

- (a) the figure "(1)" in subsection (1) thereof shall be deleted; and
- (b) subsection (2) thereof shall be repealed.

Amendment of section 110 of the principal law.

6. Section 110 of the principal law shall be amended as follows:-

- (a) for the words "may deny to the child even the maintenance mentioned in section 108" in subsection (1) thereof, there shall be substituted the words "may deny maintenance";
- (b) for the words "the maintenance mentioned in section 108" in subsection (2) thereof there shall be substituted the words "such

maintenance/....

maintenance as is necessary in respect of food, clothing and habitation".

Amendment of section 111 of the principal law. 7. In section 111 of the principal law for the words "to deny to the child the maintenance mentioned in section 10." there shall be substituted the words "to deny maintenance to the child".

Amendment of sections 142, 231, 322, 328, 336 and 338 of the principal law. 8. For the words "in the Schedule" in subsection (1) of section 142, section 231, subsection (1) of section 322, section 328, subsection (1) of section 336 and section 338 of the principal law there shall be substituted the words "in Part II of the Schedule".

Amendment of section 142 of the principal law. 9. In subsection (6) of section 142 of the principal law immediately after the figure "286", the word "subsection" shall be substituted by the words and figure "subsections (2) and".

Amendment of section 281 of the principal law. 10. In section 281 of the principal law for the words "drawn up in a foreign country by any of His Majesty's Diplomatic Agents or Consuls." there shall be substituted the words "drawn up or registered in a foreign country by a diplomatic or consular representative of the Government of Malta in that country or by a person serving in the diplomatic, consular or other foreign service of any country which, by arrangement with the Government of Malta, has undertaken to represent the interests of the Government of Malta in that country or by a person authorised in that behalf by the Governor-General".

Amendment of section 283 of the principal law. 11. In subsection (2) of section 283 of the principal law for the words "fifteen working days" there shall be substituted the words "one month".

Amendment of section 288 of the principal law. 12. For subsections (2), (3) and (4) of section 288 of the principal law there shall be substituted the following:-

"(2) In this Title the word "extract" means a certificate containing an abridged copy of one or more registered acts in accordance with Forms I, J, K, L, M, N, O and P set out in Part II of the Schedule to this Code. All corrections and annotations entered

in the margin of the registers shall be incorporated in the extract with the exception of annotations of adoptions which shall be transcribed at the back of the extract.

(3) The Director shall also, if required, give a certificate containing a true copy in full of one or more registered acts, as well as a certificate attesting the non-existence of any registration if upon a search for any such registration or act, such registration or act is not found:

Provided that any certificate containing a copy in full of one or more registered acts shall not be given except -

- (a) upon the order of a Court given in contentious proceedings; or
- (b) on application made to the court of voluntary jurisdiction on the demand made by the person to whom it relates, or if such person is a minor of the person who in accordance with the provisions of this Code has authority over him, or if the person to whom the certificate relates is dead, of his heirs; or
- (c) upon the order of the Court of Revision of Notarial acts.

(4) The Director shall also, if required, but subject to the proviso to subsection (3) of this section, give a certificate containing a translation into English or Maltese of any extract or registered act."

13. For subsection (1) of section 29^o of the principal law there shall be substituted the following:-

"(1) Any correction, cancellation or registration ordered by the Court or any declaration made by the Court in terms of section 106, shall be made by the Director within the time of ten days from the day on which the judgment shall have become res judicata

and shall/....

L-ARKIVI NAZZJONALI TA' MALTA

Amendment of
Section 29^o of
the principal
law

~~XXXX~~
Amendment of
section 304
of the
principal
law.

15. For the words "in the Schedule" in the
English text and for the words "fit-tariffa" in the
Maltese text of section 304 of the principal law,
there shall be substituted respectively the words "in
Part I of the Schedule" and the words "fit-Tarqsim I ta'
l-Iskeja".

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and shall be made on the strength of a true copy of the judgment to be supplied to him by the Registrar of the Superior Courts."

Amendment of section 295A of the principal law. 14. Section 295A of the principal law shall be renumbered as section 293A and shall be amended as follows:-

- (a) for the words "in the Schedule to this Ordinance" in subsection (1) thereof, there shall be substituted the words "in Part III of the Schedule to this Code"; and
- (b) for the words "accompanied by a legal copy" in subsection (2) thereof, there shall be substituted the words "accompanied, if the demand is made by the person mentioned in the proviso to subsection (3) of section 268, by a full copy".

Amendment of section 304 of the principal law. 15. For the words "in the Schedule" in section 304 of the principal law, there shall be substituted the words "in Part I of the Schedule".

Repeal of section 313 of the principal law. 16. Section 313 of the principal law shall be repealed.

Amendment of section 320 of the principal law. 17. In subsection (2) of section 320 of the principal law for the words "British Consul at such port" there shall be substituted the words "diplomatic or consular representative of the Government of Malta in that port or to a person serving in the diplomatic, consular or other foreign service of any country which by arrangement with the Government of Malta has undertaken to represent that Government's interest in that port or to a person authorised in that behalf by the Governor-General.

Amendment of section 324 of the principal law. 18. For the words "provisions of sections 313 and" in subsection (1) of section 324 of the principal law there shall be substituted the words "provision of section".

Substitution of section 342 of the principal law. 19. For section 342 of the principal law there shall be substituted the following:-

"Death of
person at
Sea"

"The provisions of section 320 of the principal law shall mutatis mutandis apply to the death of any person on board a vessel at sea."

Amendment of section 679 of the principal law. 20. In subsection (1) of section 679 of the principal law, the words "regard being had to the condition of the mother" shall be deleted.

Amendment of section 716 of the principal law. 21. In subsection (2) of section 716 of the principal law for the words "the British Consul or in his absence with some trustworthy person being a subject of His Majesty" there shall be substituted the words "diplomatic or consular representative of the Government of Malta in that port or with a person serving in a diplomatic, consular or other foreign service of any country which by arrangement with the Government of Malta has undertaken to represent that Government's interests in that port or with a person authorised in that behalf by the Governor-General, or in his absence, with some trustworthy person being a citizen of Malta or other Commonwealth citizen".

Amendment of section 2131 of the principal law. 22. In section 2131 of the principal law for the words "the British Consul or Diplomatic or Consular Agent" there shall be substituted the words "the diplomatic or consular representative of the Government of Malta in that place or before a person serving in the diplomatic consular or other foreign service of any country which by arrangement with the Government of Malta has undertaken to represent that Government's interests in that place or a person authorised in that behalf by the Governor-General".

Amendment of Schedule to the principal law. 23. The Schedule to the principal law shall be amended as follows:-

- (a) for the cipher "I" immediately before the heading "Fees to be levied under section 304" therein; there shall be substituted the word and cipher "Part I" and for item 7 under that heading there shall be substituted the item in the First Schedule to this Act;

(b)/....

(b) for the cipher "II" immediately before the heading "FORMS" therein, there shall be substituted the word and cipher "Part II" and immediately after Form H under that heading, there shall be added Forms I, J, K, L, M, N, O and P set out in the Second Schedule to this Act and immediately thereafter the new Part III set out in the Third Schedule to this Act.

Repeal and saving.

24. The Schedule to the Ordinance No. I of 1873 (Amendment) Ordinance, 1944, shall be repealed without prejudice to anything lawfully done or omitted to be done thereunder.

L-ARKIVI NAZZJONALI TA' MALTA

SCHEDULES

FIRST SCHEDULE

Section ~~19~~²³ (a)

7. (a) For every extract from a registered Act of birth, marriage, death or adoption as per Forms I, K, N, O in Part II of the Schedule to this Code 2s. 0d.
- (b) For every extract from a registered Act of birth, marriage, death or adoption as per Forms J, L, M, P in Part II of the Schedule to this Code 2s. 6d.
- (c) For every certificate containing a copy in full of a registration of birth, marriage or death with such notes as may be appended thereto 2s. 6d.

Note: If the applicant for the extract or for the full copy does not specify correctly the year of the entry in respect of which the extract or copy is required no charge shall be made in respect of a search in the indexes of two years, but any search necessary in the index or indexes of a third or any subsequent year shall be charged for as item 6.

L-ARKIVI NAZZJONALI TA' MALTA

ACT AND SCHEDULE

Section 12

FORM I

(Section 28G)

I, the undersigned, do hereby certify that the following is a true EXTRACT from Act of B No. registered in the Public Registry Office, Valletta, Malta, in accordance with the provisions of the Civil Code (Cap. 23).

Place of Birth	Date of Birth	Name of the child	Sex	Name and Surname and Place of birth of the father	Name and Maiden Surname and place of birth of the mother

PUBLIC REGISTRY OFFICE - VALLETTA

DIRECTOR

FORM J

(Section 288)

I the undersigned do hereby certify that
the following is a true Extract from Act of Birth
No. _____ registered in the Public Registry
Office, Valletta, Malta, in accordance with the
provisions of the Civil Code (Cap. 23).

Name and Surname:

Sex:

Date of Birth:

Place of Birth:

PUBLIC REGISTRY OFFICE

DIRECTOR

L-ARKIVI NAZZJONALI TA' MALTA

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Form K

(Section 289)

The undersigned, do hereby certify that the following is a true extract from Act of Marriage No. _____ registered in the Public Registry Office of Valletta, Malta in accordance with the provisions of the Civil Code. (Ord. -5).

Particulars respecting	Name and Surname	Occupation	Age (years)	Place of Birth
The husband				
The wife				
Place of marriage				
Date of marriage				

PUBLIC REGISTRY OFFICE - VALLETTA

DIP. CIVIL

FORM I

(Section 288)

I the undersigned do hereby certify that
the following is a true Extract from Act of Marriage
No. _____ registered in the Public Registry Office,
Valletta, Malta, in accordance with the provisions of
the Civil Code (Cap. 23).

Name and surname of husband:

Name and Maiden Surname of wife:

Place of Marriage:

Date of Marriage:

PUBLIC REGISTRY OFFICE

DIRECTOR

L-ARKIVJI NAZZJONALI TA' MALTA

FORM N

(Section 233)

I, the undersigned, do hereby certify that the following is a true ~~and correct~~ ^{copy} of the entry No. in the Adopted Persons Register kept in the Public Registry Office, Valletta, Malta, in accordance with the provisions of the Civil Code (Cap. 25).

Place of birth of person adopted	Date of birth	Name and Surname of person adopted	Sex	Name and Surname and place of birth of adopter	Date of adoption decree

PUBLIC REGISTRY OFFICE - VALLETTA

DIRECTOR

FORM N

(Section 288)

I, the undersigned do hereby certify that
the following is a true Extract ^{of} Entry No.
in the Adopted Persons Register kept in the Public
Registry Office, Valletta, Malta, in terms of the
provisions of the Civil Code (Cap. 23).

Place of Birth:

Date of Birth:

Name and Surname:

Sex:

PUBLIC REGISTRY OFFICE

DEPOTER

L-ARKIVI NAZZJONALI TA' MALTA

Form O

(Section 288)

I, the undersigned, do hereby certify that the following is a true ~~XTRACT~~ ^{from} of Act of Death
No. _____ registered in the Public Registry Office, Vallette, Malta, in accordance with the
provisions of the Civil Code (Cap. 25).

Name and Surname of the deceased	Whether married or unmarried, widower or widow	Occupation and age (years)	Place of Birth	Home and Surname of parents	Place and date of Death

PUBLIC REGISTRY OFFICE - VALLETTE
DIRECTOR

FORM P

(Section 288)

I, the undersigned do hereby certify that
the following is a true Extract ^{from} of Act of Death No.
registered in the Public Registry Office,
Valletta, Malta, in accordance with the provisions of
the Civil Code (Cap. 23).

Name and Surname of Deceased:

Place and date of Death:

Age (years):

PUBLIC REGISTRY OFFICE

DIRECTOR

L-ARKIVJI NAZZJONALI TA' MALTA

THIRD SCHEDULE

Section 4023

SCHEDULE

(Section 293A)

Acts of Birth

- (a) Date of ^{the} Act;
- (b) Place of Birth of the child;
- (c) Sex of the child;
- (d) Names given to the child;
- (e) Name or names by which the child is to be called;
- (f) Profession, trade or other status, age and place of birth and residence -
- (i) of the parents of the child; and
- (ii) of the person making the declaration;
- (g) Name and surname (1) of the grandfather of the child, (2) of the father of the person making the declaration, and (3) of the fathers of the witnesses, if any;
- (h) Whether the grandfather of the child, the father of the person making the declaration and the fathers of the witnesses, if any, are living or dead;
- (i) Name and surname, profession, trade or other status, age, place of birth and residence of the witnesses, if any;
- (j) Signature of the witnesses, if any

Acts of Marriage

- (a) Date of the Act;
- (b) Name and surname (wherever they may occur), profession, trade or other status, age, place of birth and residence of the husband and of the wife;
- (c) Name and surname, profession, trade or other status, of the parents of the husband and of the wife, and whether they are living or dead;
- (d) All the particulars of the witnesses;
- (e) The church, chapel, or other place where the marriage took place.

Acts of Death

- (a) Date of the Act;
- (b) Name and surname of the deceased;
- (c) Whether the deceased was married or unmarried, widower or widow;
- (d) Profession, trade or other status, age, place of birth and residence of the deceased;
- (e) Name and surname of parents of the deceased, and whether they are living or dead;
- (f) The place and cause of death, and place of burial;
- (g) All the particulars and the signature of the witnesses, if any.

Objects and Reasons

This Bill is intended as an act of social justice for illegitimate children in the light of progressive sociological thought and modern legislative policy. The Bill provides for the taking by an illegitimate child of the surname of the parent who has acknowledged him or of that of the father if he has been acknowledged by both parents, whereas according to existing law an illegitimate child even though acknowledged by the father may not assume his surname.

Another basic change is that introduced by clauses 3 and 4 of the Bill. A father who has acknowledged his illegitimate child will now be bound to maintain such child according to his means. This principle is also being intended to those children whose paternity has been declared by a judgment of the Court and to whom under existing law the father is only bound to supply what is necessary in respect of food, clothing and habitation, according to the condition of the mother.

This Bill also amends the law of succession in that, with respect to the estate of the father, the portion saved to illegitimate children not acknowledged but whose paternity has been declared by a judgment of the Court will no longer be determined by reference to the condition of the mother.

The Bill introduces an important amendment to section 288 of the Code in that it provides for:-

- (1) two types of abridged certificates of acts of civil status;
- (2) a restriction on the granting by the Director of the Public Registry of certificates containing a true copy in full of one or more registered acts;
- (3) the incorporation in the extracts of all corrections and annotations entered in the margin of the registers.

These measures are intended to protect persons born out of wedlock from the unnecessary divulgence of their illegitimate origin.

Finally the Bill also provides for a speedier and less expensive procedure for the correction of certain errors incurred in the drawing up and registration of acts of civil status.