

**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 209 (National Assembly Bills No. 46)*



REPUBLIC OF KENYA

***KENYA GAZETTE SUPPLEMENT***

**NATIONAL ASSEMBLY BILLS, 2020**

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**NAIROBI, 20th November, 2020**

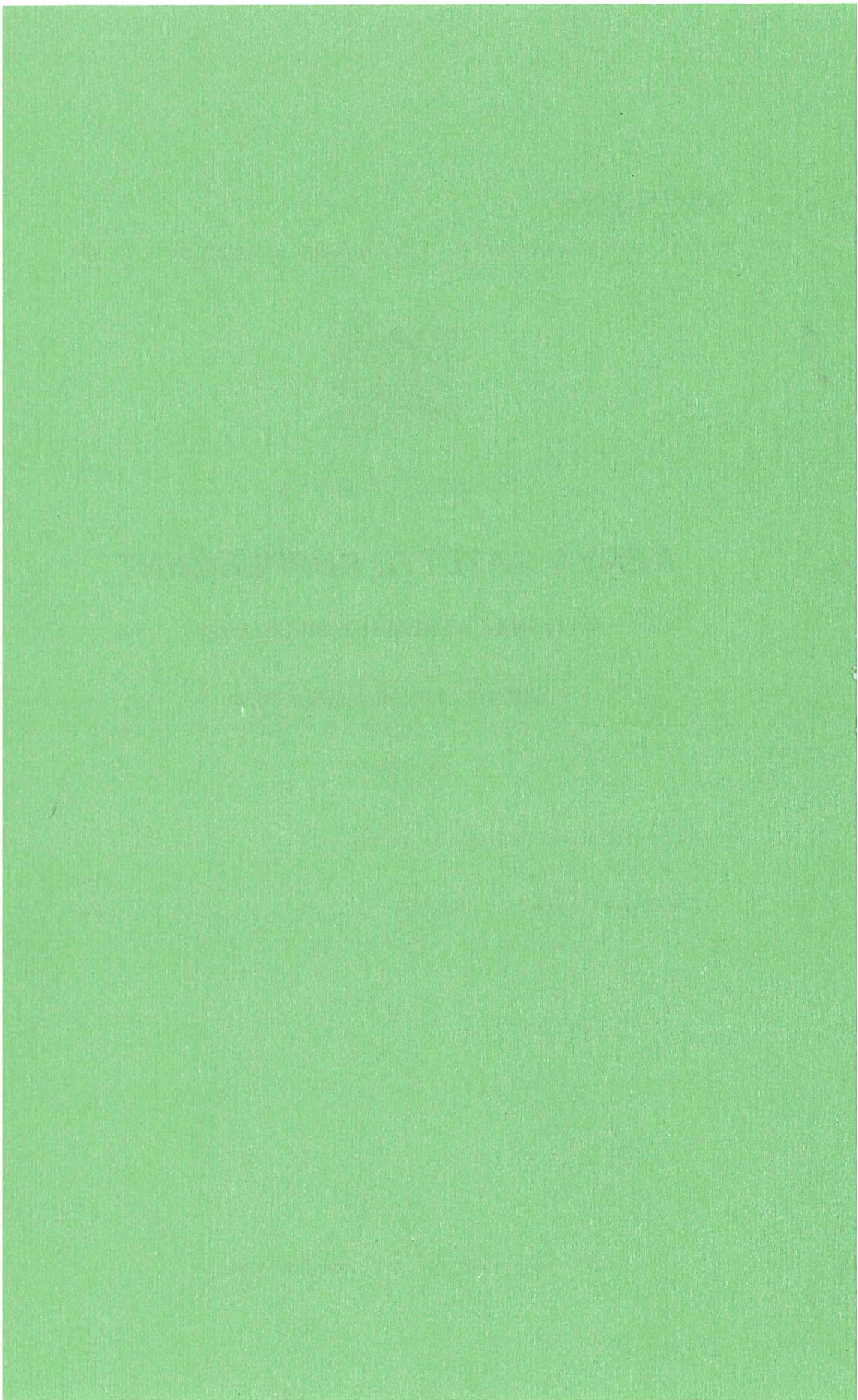
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**THE CHILDREN (AMENDMENT) BILL, 2020****A Bill for****AN ACT of Parliament to amend the Children Act and for connected purposes.**

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Children (Amendment) Act, 2020.

Short title

2. The Children Act, (in this Act referred to as the “principal Act”), is amended in section 24 by deleting subsection (3) and substituting therefor the following new subsection—

Amendment of section 24 of No. 8 of 2001.

“(3) Where a child’s father and mother were not married to at the time of the child’s birth the father and mother may by agreement (“a parental responsibility agreement”) provide for the parental responsibility of the Child.

3. The principal Act is amended by repealing section 25.

Repeal of section 25 of No. 8 of 2001.

4. Section 27 of the principal Act is amended subsection (2)—

Amendment of section 27 of No. 8 of 2001.

- (a) by deleting the words “if he has acquired parental responsibility under the provisions of this Act appearing in paragraph (a);
- (b) by deleting the words “who has acquired parental responsibility under the provisions of this Act” appearing in paragraph (b).

## **MEMORANDUM OF OBJECTS AND REASONS**

### **Statement of the Objects and Reasons for the Bill**

The principal object of this Bill is to amend the Children Act, (No. 8 of 2001) to be in conformity with the Constitution. The Bill seeks to vest equal responsibility for parental care and protection of a child in both the mother and the father whether they are married to each other or not. The Bill further provides that neither the father nor the mother of the child shall have a superior right or claim against the other in the exercise of such parental responsibility.

**Clause 1** of the Bill provides for the short title.

**Clause 2** of the Bill amends section 24 of the principal Act to make it mandatory for the father and mother of a child born to have parental responsibility of the child whether the parents were married at the time the child was being born or did not subsequently get married.

**Clause 3** seeks repeal section 25 of the Children Act that provides for acquisition of parental responsibility by a father.

**Clause 4** of the Bill seeks to amend section 27 of No. 8 of 2001 as a consequential amendment to the repeal made in clause 4 and 5 above on the need for one to acquire parental responsibility.

### **Statement of how the Bill concerns County governments**

The Bill does not concern county governments in terms of Article 110 (a) of the Constitution.

### **Statement of delegation of legislative powers and limitation of fundamental rights and freedoms.**

The Bill does not contain any provision limiting any fundamental rights or freedoms.

### **Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution.**

The enactment of this Bill shall occasion additional expenditure of public funds.

**GEORGE PETER KALUMA,**  
*Member of Parliament.*

*Section 11 of the Children Act No 8 of 201 which it is proposed to amend—*

24.(1) Where a child's father and mother were married to each other at the time of his birth, they shall have parental responsibility for the child and neither the father nor the mother of the child shall have a superior right or claim against the other in exercise of such parental responsibility.

Who has  
parental  
responsibility

(2) Where a child's father and mother were not married to each other at the time of the child's birth and have subsequently married each other, they shall have parental responsibility for the child and neither the father nor the mother of the child shall have a superior right or claim against the other in the exercise of such parental responsibility.

(3) Where a Child's father and mother were not married to each other at the time of the Child's birth and have not subsequently married each other.

- (a) The mother shall have parental responsibility at the first instance;
- (b) The father shall subsequently acquire parental responsibility for the child in accordance with the provisions of section 25.

(4) More than one person may have parental responsibility for the same child at the same time.

(5) A person who has parental responsibility for a child at any time shall not cease to have that responsibility for the child.

(6) Where more than one person has parental responsibility for a child, each of them may act alone and without the other (or others) in that responsibility; but nothing in this Part shall be taken to affect the operation of any enactment which requires the consent of more than one person in a matter affecting the child.

(7) The fact that a person has parental responsibility for a child may not entitle that person to act in any way which would be incompatible with any order made with respect to the child under this Act.

- (8) (a) A person who has parental responsibility for a child may not surrender or transfer any part of that responsibility to another but may arrange for some or all of it to be met by one or more persons acting on his behalf
- (b) The person with whom such arrangement is made may himself be a person who already has parental responsibility for the child concerned.
- (c) the making of any such arrangement shall not affect any liability of the person making it which may arise from any failure to meet any part of such person's parental responsibility for the child concerned.

*Section 26 of the Children Act which it is proposed to amend—*

26.(1) A parental responsibility agreement shall have effect for the purposes of this Act if it is made substantially in the form prescribed by the Chief Justice.

Parental  
responsibility  
agreement.

(2) A parental responsibility agreement may only be brought to an end by an order of the court made on application by—

- (a) any person who has parental responsibility for the child; or
- (b) the child himself with the leave of the court.

(3) The Court may only grant leave under subsection (2) (b) if it is satisfied that the child has sufficient understanding to make the proposed application.

*Section 27 Children Act which it is proposed to amend—*

27. (1) Where the mother and father of a child were married to each other at the time of the birth of the child or have subsequently married each other—

Transmission of  
parental  
responsibility.

- (a) on the death of the mother the father shall exercise parental responsibility for the child either alone or together with any testamentary guardian appointed by the mother
- (b) on the death of the father, the mother if living shall exercise parental responsibility for the child either

- alone or together with any testamentary guardian appointed by the father;
- (c) where both the mother and the father of the child are deceased, parental responsibility shall be exercised by—
- (i) any testamentary guardian appointed by either of the parents or
  - (ii) a guardian appointed by the court; or
  - (iii) the person in whose power a residence order was made prior to the death of the child's father and mother, and which order is still in force; or
  - (iii) the person in whose power a residence order was made prior to the death of the child's father and mother, and which order is still in force; or
  - (iv) a fit person appointed by the court; or
  - (v) in the absence of the person specified in paragraphs (i), (ii), (iii) and (iv), a relative of the child
- (2) Where the father and mother of a child were not married at the time of the birth of the child and have not subsequently married each other—
- (a) on the death of the mother of the child, the father of the child, if he has acquired parental responsibility under the provisions of this Act, shall if he is still living, have parental responsibility for the child either alone or with any testamentary guardian appointed by the mother or relatives of the mother;
  - (b) on the death of the father of a child who has acquired parental responsibility under the provisions of this Act, the mother of the child shall exercise parental responsibility in respect of the child either alone, or with any testamentary guardian appointed by the father;
  - (c) the surviving mother or father of the child, as the case may be, shall be entitled to object to any testamentary guardian appointed by either of them acting and may apply to the court for the

revocation of the appointment of the testamentary guardian and the relatives of the deceased mother or father of the child as the case may be, to be unfit to exercise parental responsibility for the child, apply to the court to make such appropriate orders as shall be necessary in the circumstances of the case to safeguard the best interest of the child.