
STATUTORY INSTRUMENTS

1977 No. 1250 (N.I. 17)

NORTHERN IRELAND

The Family Law Reform (Northern Ireland)
Order 1977

Laid before Parliament in draft

Made

26th July 1977

Coming into operation on days to be appointed under Article 1 (2)

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At the Court at Buckingham Palace, the 26th day of July 1977

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 (a), and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

PART I
INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Family Law Reform (Northern Ireland) Order 1977.

(2) This Order, except this Article and Article 2, shall come into operation on such day or days as the Secretary of State may by order appoint.

Interpretation

2. The Interpretation Act (Northern Ireland) 1954 (b) shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

PART II
PROPERTY RIGHTS OF ILLEGITIMATE CHILDREN

Right of illegitimate child to succeed on intestacy of parents, and of parents to succeed on intestacy of illegitimate child

3.—(1) Where either parent of an illegitimate child dies intestate as respects all or any of his or her estate, the illegitimate child or, if he is dead, his issue, shall be entitled to take any interest therein to which he or such issue would have been entitled if he had been born legitimate.

(2) Where an illegitimate child dies intestate in respect of all or any of his estate, each of his parents, if surviving, shall be entitled to take any interest therein to which that parent would have been entitled if the child had been born legitimate.

(a) 1974 c. 28. (b) 1954 c. 33 (N.I.).

(3) In accordance with paragraphs (1) and (2), Part II of the Administration of Estates Act (Northern Ireland) 1955 (a) (which deals with the distribution of the estate of an intestate) shall have effect as if—

- (a) any reference to the issue or descendants of the intestate included a reference to any illegitimate child of his and to the issue of any such child;
- (b) any reference to a child or children of the intestate included a reference to any illegitimate child or children of his; and
- (c) in relation to an intestate who is an illegitimate child, any reference to the parent or parents of the intestate were a reference to his natural parent or parents.

(4) For the purposes of paragraph (2) and of the provisions amended by paragraph (3) (c), an illegitimate child shall be presumed not to have been survived by his father unless the contrary is shown.

(5) This Article does not apply to or affect the right of any person to take any property which is limited in tail or is subject to an entailed interest.

(6) The references in section 19 (1) of the said Act of 1955 (which relates to the construction of documents) to Part II of that Act, and to the foregoing provisions of that Part, shall in relation to an instrument inter vivos made, or a will coming into operation, after the commencement of this Article (but not in relation to instruments inter vivos made or wills coming into operation earlier) be construed as including references to this Article.

(7) Section 9 of the Legitimacy Act (Northern Ireland) 1928 (b) (under which an illegitimate child and his issue are entitled to succeed on the intestacy of his mother if she leaves no legitimate issue, and the mother of an illegitimate child is entitled to succeed on his intestacy as if she were the only surviving parent) is hereby repealed.

(8) In this Article, “illegitimate child” does not include an illegitimate child who is—

- (a) a legitimated person within the meaning of the said Act of 1928 or a person recognised by virtue of that Act or at common law as having been legitimated; or
- (b) an adopted person under an adoption order made in any part of the United Kingdom, the Isle of Man or the Channel Islands or under a foreign adoption as defined in section 4 (3) of the Adoption (Hague Convention) Act (Northern Ireland) 1969 (c).

(9) This Article does not affect any rights under the intestacy of a person dying before the commencement of this Article.

(10) It is hereby declared that a will comes into operation on the death of the testator.

Presumption that in dispositions of property references to children and other relatives include references to, and to persons related through, illegitimate children

4.—(1) In any disposition made after the commencement of this Article—

- (a) any reference (whether express or implied) to the child or children of any person shall, unless the contrary intention appears, be construed as, or as including, a reference to any illegitimate child of that person; and

(a) 1955 c. 24 (N.I.). (b) 1928 c. 5 (N.I.).
(c) 1969 c. 22 (N.I.).

- (b) any reference (whether express or implied) to a person or persons related in some other manner to any person shall, unless the contrary intention appears, be construed as, or as including, a reference to anyone who would be so related if he, or some other person through whom the relationship is deduced, had been born legitimate.
- (2) Paragraph (1) applies only where the reference in question is—
- (a) to a person who is to benefit or to be capable of benefiting under the disposition; or
- (b) for the purpose of designating such a person as is mentioned in subparagraph (a), to someone else to or through whom that person is related.
- (3) Paragraph (1) does not affect the construction of the word “heir” or “heirs” or of any expression which is used to create an estate tail or an entailed interest.
- (4) In relation to any disposition made after the commencement of this Article, section 34 of the Trustee Act (Northern Ireland) 1958 (a) (which specifies the trusts implied by a direction that income is to be held on protective trusts for the benefit of any person) shall have effect as if—
- (a) the reference to the children or more remote issue of the principal beneficiary included a reference to any illegitimate child of the principal beneficiary and to anyone who would rank as such issue if he, or some other person through whom he is descended from the principal beneficiary, had been born legitimate; and
- (b) the reference to the issue of the principal beneficiary included a reference to anyone who would rank as such issue if he, or some other person through whom he is descended from the principal beneficiary, had been born legitimate.
- (5) In this Article, references to an illegitimate child include references to a child born illegitimate who is or becomes a legitimated person within the meaning of the Legitimacy Act (Northern Ireland) 1928 or a person recognised by virtue of that Act or at common law as having been legitimated; and in section 3 of that Act—
- (a) subsection (1) (b) (which relates to the effect of dispositions where a person has been legitimated) shall not apply to a disposition made after the coming into force of this Article, 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; and
- (b) 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 in relation to any right conferred by a disposition made after the coming into force of this Article, unless the terms of the disposition are such that the children whose relative seniority is in question cannot include any illegitimate children who are not either—
- (i) legitimated persons within the meaning of that Act; or
- (ii) persons recognised by virtue of that Act as having been legitimated.
- (6) Where under any disposition any real or personal property or any interest in such property is limited (whether subject to any preceding limitation or charge or not) in such a way that it would, apart from this Article, devolve

(a) 1958 c. 23 (N.I.).

(as nearly as the law permits) along with a dignity or title of honour, then, whether or not the disposition contains an express reference to the dignity or title of honour, and whether or not the property or some interest in the property may in some event become severed therefrom, nothing in this Article shall operate to sever the property or any interest therein from the dignity or title, but the property or interest shall devolve in all respects as if this Article had not been enacted.

(7) This Article is without prejudice to sections 18 and 19 of the Adoption Act (Northern Ireland) 1967 (a) (which relate to the construction of dispositions in cases of adoption).

(8) There is hereby abolished, as respects dispositions made after the commencement of this Article, 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.

(9) In this Article, “disposition” means a disposition, including an oral disposition, of real or personal property whether inter vivos or by will; and notwithstanding any rule of law, a disposition made by will executed before the date on which this Article comes into force shall not be treated for the purposes of this Article as made on or after that date by reason only that the will is confirmed by a codicil executed on or after that date.

Meaning of “child” and “issue” in section 33 of Wills Act 1837

5.—(1) In relation to a testator who dies after the commencement of this Article, section 33 of the Wills Act 1837 (b) (gift to children or other issue of testator not to lapse if they predecease him but themselves leave issue) shall have effect as if—

- (a) the reference to a child or other issue of the testator (that is, the intended beneficiary) included a reference to any illegitimate child of the testator and to anyone who would rank as such issue if he, or some other person through whom he is descended from the testator, had been born legitimate; and
- (b) the reference to the issue of the intended beneficiary included a reference to anyone who would rank as such issue if he, or some other person through whom he is descended from the intended beneficiary, had been born legitimate.

(2) In this Article, “illegitimate child” includes a child born illegitimate who is a legitimated person within the meaning of the Legitimacy Act (Northern Ireland) 1928 or a person recognised by virtue of that Act or at common law as having been legitimated.

Protection of trustees and personal representatives

6.—(1) Notwithstanding the foregoing provisions of this Part, trustees or personal representatives may convey or distribute any real or personal property to or among the persons entitled thereto without having ascertained that there is not any person who is or may be entitled to any interest therein by virtue of—

- (a) Article 3 so far as it confers any interest on illegitimate children or their issue or on the father of an illegitimate child; or
- (b) Article 4 or 5;

and shall not be liable to any such person of whose claim they have not had notice at the time of the conveyance or distribution.

(a) 1967 c. 35 (N.I.).

(b) 1837 c. 26.

(2) Nothing in this Article shall prejudice the right of any such person to follow the property, or any property representing it, into the hands of any person, other than a purchaser, who may have received it.

Illegitimate children to count as dependants under Inheritance (Family Provision) Act (Northern Ireland) 1960

7.—(1) For the purposes of the Inheritance (Family Provision) Act (Northern Ireland) 1960 (a), a person's illegitimate son or daughter shall be treated as his dependant in any case in which a legitimate son or daughter of that person would be so treated; and, accordingly, in the definition of "son" and "daughter" in section 9 of that Act, after the words "respectively, include" there shall be inserted the words "an illegitimate son or daughter of the deceased,".

(2) This Article does not affect the operation of the said Act of 1960 in relation to a person dying before the commencement of this Article.

PART III

PROVISIONS FOR USE OF BLOOD TESTS IN DETERMINING PATERNITY

Power of court to require use of blood tests

8.—(1) In any civil proceedings in which the paternity of any person falls to be determined by the court hearing the proceedings, the court may, on an application by any party to the proceedings, give a direction for the use of blood tests to ascertain whether such tests show that a party to the proceedings is or is not thereby excluded from being the father of that person and for the taking, within a period to be specified in the direction, of blood samples from that person, the mother of that person and any party alleged to be the father of that person or from any, or any two, of those persons.

(2) The person responsible for carrying out blood tests taken for the purpose of giving effect to a direction under this Article shall make to the court by which the direction was given a report in which he shall state—

- (a) the results of the tests;
- (b) whether the party to whom the report relates is or is not excluded by the results from being the father of the person whose paternity is to be determined; and
- (c) if that party is not so excluded, the value, if any, of the results in determining whether that party is that person's father;

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

(3) A report under paragraph (2) shall be in the form prescribed by regulations made under Article 10.

(4) Where a report has been made to a court under paragraph (2), 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 amplifying any statement made in the report, and that statement shall be deemed for the purposes of this Article (except paragraph (3)) to form part of the report made to the court.

(5) Where a direction is given under this Article in any proceedings, a party to the proceedings, unless the court otherwise directs, shall not be entitled to call as a witness the person responsible for carrying out the tests taken for the

(a) 1960 c. 15 (N.I.).

purpose of giving effect to the direction, or any person by whom any thing necessary for the purpose of enabling those tests to be carried out was done, unless within fourteen 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; and where any such person is called as a witness the party who called him shall be entitled to cross-examine him.

(6) Where a direction is given under this Article the party on whose application the direction is given shall pay the cost of taking and testing blood 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 the purpose), and of making a report to the court under this Article, but the amount paid shall be treated as costs incurred by him in the proceedings.

(7) A court may at any time revoke or vary a direction previously given by it under this Article.

Consents, etc., required for taking of blood samples

9.—(1) Subject to the provisions of paragraphs (3) and (4) a blood sample which is required to be taken from any person for the purpose of giving effect to a direction under Article 8 shall not be taken from that person except with his consent.

(2) The consent of a minor who has attained the age of sixteen years to the taking from himself of a blood sample shall be as effective as it would be if he were of full age; and where a minor has by virtue of this paragraph given an effective consent to the taking of a blood sample it shall not be necessary to obtain any consent for it from any other person.

(3) A blood sample may be taken from a person under the age of sixteen years, not being such a person as is referred to in paragraph (4), if the person who has the care and control of him consents.

(4) A blood sample may be taken from a person who is suffering from mental disorder within the meaning of the Mental Health Act (Northern Ireland) 1961 (a) and is incapable of understanding the nature and purpose of blood tests if the person who has the care and control of him consents and the medical practitioner in whose care he is has certified that the taking of a blood sample from him will not be prejudicial to his proper care and treatment.

(5) The foregoing provisions of this Article are without prejudice to the provisions of Article 11.

Power to provide for manner of giving effect to direction for use of blood tests

10.—(1) The Secretary of State may by regulations make provision as to the manner of giving effect to directions under Article 8 and, in particular, in such regulations may—

- (a) provide that blood samples shall not be taken except by such medical practitioners as may be appointed by the Secretary of State;
- (b) regulate the taking, identification and transport of blood samples;
- (c) require the production at the time when a blood 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;

(a) 1961 c. 15 (N.I.).

- (d) require any person from whom 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 or the person from whom the sample is to be taken, as the case may be, has during such period as may be specified in the regulations suffered from any such illness as may be so specified or received a transfusion of blood;
- (e) provide that blood tests shall not be carried out except by such persons, and at such places, as may be appointed by the Secretary of State;
- (f) prescribe the blood tests to be carried out and the manner in which they are to be carried out;
- (g) regulate the charges that may be made for the taking and testing of blood samples and for the making of a report to a court under Article 8;
- (h) make provision for securing that so far as practicable the blood samples to be tested for the purpose of giving effect to a direction under Article 8 are tested by the same person;
- (i) prescribe the form of the report to be made to a court under Article 8.

(2) Regulations made under this Article shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument, and section 5 of the Statutory Instruments Act 1946 (a) shall apply accordingly.

Failure to comply with direction for taking blood tests

11.—(1) Where a court gives a direction under Article 8 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 any proceedings in which the paternity of any person falls to be determined by the court hearing the proceedings, there is a presumption of law that that person is legitimate, then if—

- (a) a direction is given under Article 8 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 paragraph (1), dismiss his claim for relief notwithstanding the absence of evidence to rebut the presumption.

(3) Where any person named in a direction under Article 8, fails to consent to the taking of a blood sample from himself or from any person named in the direction of whom he has the care and control, he shall be deemed for the purposes of this Article to have failed to take a step required of him for the purpose of giving effect to the direction.

Penalty for personating another, etc., for purpose of providing blood sample

12. If, for the purpose of providing a blood sample for a test required to give effect to a direction under Article 8, any person personates another, or proffers a child knowing that it is not the child named in the direction, he shall be guilty of an offence and shall be liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both;
- (b) on summary conviction, to a fine not exceeding £400.

Interpretation of Part III

13. In this Part—

“blood samples” means blood taken for the purpose of blood tests;

“blood tests” means blood tests carried out under this Part and includes any test made with the object of ascertaining the inheritable characteristics of blood;

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

PART IV

MISCELLANEOUS

Rebuttal of presumption as to legitimacy and illegitimacy

14. Any presumption of law as to the legitimacy or illegitimacy of any person may in any civil proceedings be rebutted by evidence which shows that it is more probable than not that that person is illegitimate or legitimate, as the case may be, and it shall not be necessary to prove that fact beyond reasonable doubt in order to rebut the presumption.

Guardianship of illegitimate children

15. The following section shall be inserted in the Guardianship of Infants Act 1886 (a) after section 5—

“Custody,
etc., of
illegitimate
children.

5A.—(1) Section 5 of this Act shall apply in relation to an infant who is illegitimate as it applies in relation to an infant who is legitimate, and the person who is the natural father of an illegitimate infant may, as well as the mother, apply for an order in relation to the infant under that section; and the first reference in that section to the mother, and references to the father or parent, of an infant shall be construed accordingly.

(2) For the purposes of—

(a) section 6 of the Tenures Abolition Act (Ireland) 1662 (b) (power of father to appoint, by deed or will, a guardian for his infant child), and

(b) sections 2 and 3 of this Act,

a person who is the natural father of an illegitimate infant and who is entitled to his custody by virtue of an order in force under section 5 of this Act as applied by this section shall be treated as if he were the lawful father of the infant; but any appointment of a guardian made by virtue of this subsection under section 6 of the said Act of

(a) 1886 c. 27.

(b) 1662 c. 19 (Ir.).

1662 shall, where it is made by will, be of no effect unless the appointer is entitled to the custody of the infant as aforesaid immediately before his death.”.

Repeal of obsolete, etc., enactments

16. The following enactments of the Parliament of England, which are obsolete or have been impliedly repealed, are hereby repealed—

- (a) 21 Henry 3 (1237)—Custom of England that person born out of wedlock cannot inherit to be observed in Ireland;
- (b) 22 Henry 3 (1238)—Custom of England that land of bastard without heir reverts to lord to be observed in Ireland.

N. E. Leigh,
Clerk of the Privy Council.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order amends the law of Northern Ireland in relation to illegitimacy and proof of paternity. It gives the same rights of intestate succession to property, between an illegitimate child and his parents, as already exist between a legitimate child and his parents. It reverses the presumption that, in dispositions of property, references to children or other relatives are references only to those who are legitimate or whose relationship is traceable through a legitimate link. It makes provision about the use of blood tests for the purpose of determining the paternity of any person in civil proceedings, the evidence required to rebut a presumption of legitimacy or illegitimacy and the rights of the natural father in relation to custody of, or access to, an illegitimate child. Two obsolete enactments about the devolution of property to or from persons born out of wedlock are repealed.

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