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STATUTORY INSTRUMENTS

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**1987 No. 2203**

**The Adoption (Northern Ireland) Order 1987**

**PART V**

**STATUS OF ADOPTED CHILDREN**

**Meaning of “adoption” in Part V**

**39.**—(1) In this Part “adoption” means adoption—

- (a) by an adoption order;
- (b) by an order made under the Adoption Act (Northern Ireland) 1967<sup>(1)</sup>, the Adoption of Children Act (Northern Ireland) 1950<sup>(2)</sup> or the Adoption of Children Act (Northern Ireland) 1929<sup>(3)</sup>;
- (c) by an order made in England and Wales, Scotland, the Isle of Man or in any of the Channel Islands; or
- (d) which is an adoption recognised by the law of Northern Ireland and effected under the law of any other country,

and cognate expressions shall be construed accordingly.

(2) The definition of adoption includes, where the context admits, an adoption effected before the commencement of this Part, and the date of an adoption effected by an order is the date of the making of the order.

**Status conferred by adoption**

**40.**—(1) An adopted child shall be treated in law—

- (a) where the adopters are a married couple, as if he had been born as a child of the marriage (whether or not he was in fact born after the marriage was solemnized);
- (b) in any other case, as if he had been born to the adopter in wedlock (but not as a child of any actual marriage of the adopter).

(2) An adopted child shall, subject to paragraph (3), be treated in law as if he were not the child of any person other than the adopters or adopter.

(3) Paragraph (2)—

- (a) does not apply for the purposes of the Table in Article 18(1) of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984<sup>(4)</sup> (prohibited degrees of relationship); and

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(1) 1967 c. 35 (N.I.)

(2) 1950 c. 6 (N.I.)

(3) 1929 c. 15 (N.I.)

(4) 1984 NI 14

- (b) in the case of a child adopted by one of its natural parents as sole adoptive parent, has no effect as respects entitlement to property depending on relationship to that parent, or as respects anything else depending on that relationship.
- (4) It is hereby declared that this Article prevents an adopted child from being illegitimate.
- (5) This Article has effect—
  - (a) in the case of an adoption before the commencement of this Part from that time, and
  - (b) in the case of any other adoption, from the date of the adoption.
- (6) Subject to the provisions of this Part, this Article—
  - (a) applies for the construction of statutory provisions or instruments passed or made before the adoption or later, and so applies subject to any contrary indication; and
  - (b) has effect as respects things done, or events occurring, after the adoption, or after the commencement of this Part, whichever is the later.

### **Adoptive relatives**

**41.** A relationship existing by virtue of Article 40 may be referred to as an adoptive relationship, and

- (a) a male adopter may be referred to as the adoptive father;
- (b) a female adopter may be referred to as the adoptive mother;
- (c) any other relative of any degree under an adoptive relationship may be referred to as an adoptive relative of that degree,

but this Article does not prevent the term “parent”, or any other term not qualified by the word “adoptive”, being treated as including an adoptive relative.

### **Rules of construction for instruments concerning property**

**42.—(1)** Subject to any contrary indication, the rules of construction contained in this Article apply to any instrument, other than an existing instrument, so far as it contains a disposition of property.

(2) In applying Article 40(1) to a disposition which depends on the date of birth of a child or children of the adoptive parent or parents, the disposition shall be construed as if—

- (a) the adopted child had been born on the date of adoption,
- (b) two or more children adopted on the same date had been born on that date in the order of their actual births,

but this does not affect any reference to the age of a child.

(3) Examples of phrases in wills on which paragraph (2) can operate are—

1. Children of A “living at my death or born afterwards”.
2. Children of A “living at my death or born afterwards before any one of such children for the time being in existence attains a vested interest and who attain the age of 21 years”.
3. As in example 1 or 2, but referring to grandchildren of A instead of children of A.
4. A for life “until he has a child”, and then to his child or children.

Note. Paragraph (2) will not affect the reference to the age of 21 years in example 2.

(4) Article 40(2) does not prejudice any interest vested in possession in the adopted child before the adoption, or any interest expectant (whether immediately or not) upon an interest so vested.

(5) Where it is necessary to determine for the purposes of a disposition of property effected by an instrument whether a woman can have a child, it shall be presumed that once a woman has attained the age of 55 years she will not adopt a child after execution of the instrument, and, notwithstanding Article 40, if she does so that child shall not be treated as her child or as the child of her spouse (if any) for the purposes of the instrument.

(6) In this Article, “instrument” includes a private Act or Measure settling property, but not any other statutory provision.

### **Dispositions depending on date of birth**

**43.**—(1) Where a disposition depends on the date of birth of a child who was born illegitimate and who is adopted by one of the natural parents as sole adoptive parent, Article 42(2) does not affect entitlement under Part II of the Family Law Reform (Northern Ireland) Order 1977(5) (illegitimate children).

(2) Paragraph (1) applies for example where—

- (a) a testator dies in 1986 bequeathing a legacy to his eldest grandchild living at a specified time,
- (b) his daughter has an illegitimate child in 1987 who is the first grandchild,
- (c) his married son has a child in 1988,
- (d) subsequently the illegitimate child is adopted by the mother as sole adoptive parent,

and in all those cases the daughter’s child remains the eldest grandchild of the testator throughout.

### **Property devolving with peerages, etc.**

**44.**—(1) An adoption does not affect the descent of any peerage or dignity or title of honour.

(2) An adoption shall not affect the devolution of any property limited (expressly or not) to devolve (as nearly as the law permits) along with any peerage or dignity or title of honour.

(3) Paragraph (2) applies only if and so far as a contrary intention is not expressed in the instrument, and shall have effect subject to the terms of the instrument.

### **Protection of trustees and personal representatives**

**45.**—(1) A trustee or personal representative is not under a duty, by virtue of the law relating to trusts or the administration of estates, to enquire, before conveying or distributing any property, whether any adoption has been effected or revoked if that fact could affect entitlement to the property.

(2) A trustee or personal representative shall not be liable to any person by reason of a conveyance or distribution of the property made without regard to any such fact if he has not received notice of the fact before the conveyance or distribution.

(3) This Article does not prejudice the right of a person to follow the property, or any property representing it, into the hands of another person, other than a purchaser, who has received it.

### **Meaning of “disposition”**

**46.**—(1) In this Part, unless the context otherwise requires,—

“disposition” includes the conferring of a power of appointment and any other disposition of an interest in or right over property;

“power of appointment” includes any discretionary power to transfer a beneficial interest in property without the furnishing of valuable consideration.

(2) This Part applies to an oral disposition as if contained in an instrument made when the disposition was made.

(3) For the purposes of this Part, the death of the testator is the date at which a will or codicil is to be regarded as made.

(4) For the purposes of this Part, provisions of the law of intestate succession applicable to the estate of a deceased person shall be treated as if contained in an instrument executed by him (while of full capacity) immediately before his death.

(5) It is hereby declared that references in this Part to dispositions of property include references to a disposition by the creation of an entailed interest.

### **Miscellaneous**

**47.**—(1) Article 40 does not apply for the purposes of sections 1 to 3 of the Punishment of Incest Act 1908(6) (incest).

(2) Article 40 does not apply for any purpose relating to nationality or immigration.

(3) Subject to regulations made under section 72 of the Social Security (Northern Ireland) Act 1975 (entitlement of certain relatives of deceased to industrial death benefit), Article 40 shall not affect the entitlement to an industrial death benefit of a person who would, apart from that Article, be treated as a relative of a deceased person for the purposes of the said section 72.

(4) The revocation of an adoption order under Article 55 does not affect any right to property under an instrument executed before the date of revocation.

### **Pensions**

**48.** Article 40(2) does not affect entitlement to a pension which is payable to or for the benefit of a child and is in payment at the time of his adoption.

### **Insurance**

**49.** Where a child is adopted whose natural parent has effected an insurance with a friendly society or a collecting society or an industrial insurance company for the payment on the death of the child of money for funeral expenses, the rights and liabilities under the policy shall by virtue of the adoption be transferred to the adoptive parents who shall for the purposes of the enactments relating to such societies and companies be treated as the person who took out the policy.