



# Legitimacy Act 1959

## 1959 CHAPTER 73

An Act to amend the Legitimacy Act, 1926, to legitimate the children of certain void marriages, and otherwise to amend the law relating to children born out of wedlock. [29th July, 1959]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### **1 Amendment of Legitimacy Act, 1926.**

- (1) Subsection (2) of section one of the Legitimacy Act, 1926 (which excludes the operation of that Act in the case of an illegitimate person whose father or mother was married to a third person at the time of the birth) is hereby repealed.
- (2) In relation to an illegitimate person to whom it applies by virtue of this section, the Legitimacy Act, 1926, shall have effect as if for references to the commencement of that Act there were substituted references to the commencement of this Act.

### **2 Legitimacy of children of certain void marriages.**

- (1) Subject to the provisions of this section, the child of a void marriage, whether born before or after the commencement of this Act, shall be treated as the legitimate child of his parents if at the time of the act of intercourse resulting in the birth (or at the time of the celebration of the marriage if later) both or either of the parties reasonably believed that the marriage was valid.
- (2) This section applies, and applies only, where the father of the child was domiciled in England at the time of the birth or, if he died before the birth, was so domiciled immediately before his death.
- (3) This section, so far as it affects the succession to a dignity or title of honour, or the devolution of property settled therewith, applies only to children born after the commencement of this Act.

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- (4) This section does not affect any rights under the intestacy of a person who died before the commencement of this Act, and does not (except so far as may be necessary to avoid the severance from a dignity or title of honour of property settled therewith) affect the operation or construction of any disposition coming into operation before the commencement of this Act.
- (5) In this section the following expressions have the meanings hereby assigned to them, that is to say—
- " void marriage " means a marriage, not being voidable only, in respect of which the High Court has or had jurisdiction to grant a decree of nullity, or would have or would have had such jurisdiction if the parties were domiciled in England;
- " disposition " has the same meaning as in the Legitimacy Act, 1926;
- and any reference in this section to property settled with a dignity or title of honour is a reference to any real or personal property, or any interest in such property, which is limited by any disposition (whether subject to a preceding limitation or charge or not) in such a way as to devolve with the dignity or title as nearly as the law permits, whether or not the disposition contains an express reference to the dignity or title and whether or not the property or some interest in the property may in some event become severed from it.
- (6) In subsection (1) of section seventeen of the Matrimonial Causes Act, 1950 (which enables an application to be made to the High Court for a decree declaring that the applicant is the legitimate child of his parents, and that the marriage of his father and mother or of his grandfather and grandmother was a valid marriage or that his own marriage was a valid marriage) for the words " and that" there shall be substituted the words " or that ".

### **3 Custody and guardianship of illegitimate infants.**

- (1) Subject to the provisions of this section, the following enactments relating to the custody of infants, that is to say—
- (a) section five of the Guardianship of Infants Act, 1886 (which enables the court to make, on the application of the mother of an infant, orders regarding the custody of the infant and the right of access thereto of either parent); and
- (b) section sixteen of the Administration of Justice Act, 1928 (which enables the court to make orders under the said section five on the application of the father of an infant),
- shall apply in relation to an infant who is illegitimate as they apply in relation to an infant who is legitimate, and references in those enactments, and in any other enactment so far as it relates to proceedings under the said section five, to the father or mother or parent of an infant shall be construed accordingly.
- (2) No order shall be made by virtue of this section under subsection (2) of section three of the Guardianship of Infants Act, 1925 (which enables the court, upon making an order in respect of an infant under section five of the Guardianship of Infants Act, 1886, to order the payment of money towards the maintenance or education of the infant).
- (3) For the purposes of sections four and five of the Guardianship of Infants Act, 1925 (which relate to the guardianship of infants after the death of their father or mother), a person being the natural father of an illegitimate infant and being entitled to his custody by virtue of an order in force under section five of the Guardianship of Infants

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Act, 1886, 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 subsection (1) of section five of the said Act of 1925 shall be of no effect unless the appointor is entitled to the custody of the infant as aforesaid immediately before his death.

#### **4 Applications, &c., under s.1 of Affiliation Proceedings Act, 1957.**

An application under section one of the Affiliation Proceedings Act, 1957, may be made by a woman who was a single woman at the date of the birth of the child whether or not she is a single woman at the time of the application and the reference to a single woman in section two of that Act (which relates to the time within which such application may be made) shall be construed accordingly.

#### **5 Procedure on applications for affiliation orders.**

- (1) The proceedings which are domestic proceedings within the meaning of the Magistrates' Courts Act, 1952, shall include proceedings on an application for an affiliation order made under the Affiliation Proceedings Act, 1957, section forty-four of the National Assistance Act, 1948, or section twenty-six of the Children Act, 1948 (other than proceedings for the enforcement, revocation, revival or variation of an affiliation order), and section fifty-six of the said Act of 1952 (which defines " domestic proceedings ") shall have effect accordingly.
- (2) In subsection (1) of section sixty of the Magistrates' Courts Act, 1952, the words " or of proceedings for an affiliation order " are hereby repealed.

#### **6 Extent, short title, commencement, and saving.**

- (1) This Act shall not apply to Scotland or Northern Ireland.
- (2) This Act may be cited as the Legitimacy Act, 1959.
- (3) This Act shall come into force on the expiration of three months beginning with the day on which it is passed.
- (4) It is hereby declared that nothing in this Act affects the Succession to the Throne.

#### **TABLE OF STATUTES REFERRED TO IN THIS ACT**

Short Title	Session and Chapter
Guardianship of Infants Act, 1886	49 & 50 Vict. c. 27.
Guardianship of Infants Act, 1925	15 & 16 Geo. 5. c. 45.
Legitimacy Act, 1926	16 & 17 Geo. 5. c. 60.
Administration of Justice Act, 1928	18 & 19 Geo. 5. c. 26.
National Assistance Act, 1948	11 & 12 Geo. 6. c. 29.
Children Act, 1948	11 & 12 Geo. 6. c. 43.
Matrimonial Causes Act, 1950	14 Geo. 6. c. 25.
Magistrates' Courts Act, 1952	15 & 16 Geo. 6 & 1 Eliz. 2. c. 55.

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Short Title	Session and Chapter
Affiliation Proceedings Act, 1957	5 & 6 Eliz. 2. c. 55.