



# Legitimacy Act 1976

## 1976 CHAPTER 31

An Act to consolidate certain enactments relating to legitimacy. [22nd July 1976]

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 Legitimacy of children of certain void marriages**

- (1) The child of a void marriage, whenever born, shall, subject to subsection (2) below and Schedule 1 to this Act, 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 only applies where the father of the child was domiciled in England and Wales at the time of the birth or, if he died before the birth, was so domiciled immediately before his death.

### **2 Legitimation by subsequent marriage of parents**

Subject to the following provisions of this Act, where the parents of an illegitimate person marry one another, the marriage shall, if the father of the illegitimate person is at the date of marriage domiciled in England and Wales, render that person, if living, legitimate from the date of the marriage.

### **3 Legitimation by extraneous law**

Subject to the following provisions of this Act, where the parents of an illegitimate person marry one another and the father of the illegitimate person is not at the time of the marriage domiciled in England and Wales but is domiciled in a country by the law of which the illegitimate person became legitimated by virtue of such subsequent marriage, that person, if living, shall in England and Wales be recognised as having

been so legitimated from the date of the marriage notwithstanding that, at the time of his birth, his father was domiciled in a country the law of which did not permit legitimation by subsequent marriage.

#### **4 Legitimation of " adopted child**

- (1) Paragraph 3 of Schedule 1 to the Children Act 1975 does not prevent an adopted child being legitimated under section 2 or 3 above if either natural parent is the sole adoptive parent.
- (2) Where an adopted child (with a sole adoptive parent) is legitimated—
  - (a) sub-paragraph (2) of the said paragraph 3 shall not apply after the legitimation to the natural relationship with the other natural parent, and
  - (b) revocation of the adoption order in consequence of the legitimation shall not affect Part II of the said Schedule 1 as it applies to any instrument made before the date of legitimation.

#### **5 Rights of legitimated persons and others to take interests in property**

- (1) Subject to any contrary indication, the rules of construction contained in this section apply to any instrument other than an existing instrument, so far as the instrument contains a disposition of property.
- (2) For the purposes of this section, 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.
- (3) A legitimated person, and any other person, shall be entitled to take any interest as if the legitimated person had been born legitimate.
- (4) A disposition which depends on the date of birth of a child or children of the parent or parents shall be construed as if—
  - (a) a legitimated child had been born on the date of legitimation,
  - (b) two or more legitimated children legitimated 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.
- (5) Examples of phrases in wills on which subsection (4) above 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.* Subsection (4) above will not affect the reference to the age of 21 years in example 2.

- (6) If an illegitimate person or a person adopted by one of his natural parents dies, or has died before the commencement of this Act, and—
  - (a) after his death his parents marry or have married ; and
  - (b) the deceased would, if living at the time of the marriage, have become a legitimated person,

this section shall apply for the construction of the instrument so far as it relates to the taking of interests by, or in succession to, his spouse, children and remoter issue as if he had been legitimated by virtue of the marriage.

- (7) In this section " instrument" includes a private Act settling property, but not any other enactment.

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

- (1) Where a disposition depends on the date of birth of a child who was born illegitimate and who is legitimated (or, if deceased, is treated as legitimated), section 5(4) above does not affect entitlement under Part II of the Family Law Reform Act 1969 (illegitimate children).
- (2) Where a disposition depends on the date of birth of an adopted child who is legitimated (or, if deceased, is treated as legitimated) section 5(4) above does not affect entitlement by virtue of paragraph 6(2) of Schedule 1 to the Children Act 1975.
- (3) This section applies for example where—
- (a) a testator dies in 1976 bequeathing a legacy to his eldest grandchild living at a specified time,
  - (b) his daughter has an illegitimate child in 1977 who is the first grandchild, \*
  - (c) his married son has a child in 1978,
  - (d) subsequently the illegitimate child is legitimated,
- and in all those cases the daughter's child remains the eldest grandchild of the testator throughout.

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

- (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 person is illegitimate or has been adopted by one of his natural parents, and could be legitimated (or if deceased be treated as legitimated), 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 section 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.

## **8 Personal rights and obligations**

A legitimated person shall have the same rights, and shall be under the same obligations in respect of the maintenance and support of himself or of any other person as if he had been born legitimate, and, subject to the provisions of this Act, the provisions of any Act relating to claims for damages, compensation, allowance, benefit or otherwise by or in respect of a legitimate child shall apply in like manner in the case of a legitimated person.

## 9 Re-registration of births

- (1) It shall be the duty of the parents of a legitimated person or, in cases where re-registration can be effected on information furnished by one parent and one of the parents is dead, of the surviving parent to furnish to the Registrar General information with a view to obtaining the re-registration of the birth of that person within 3 months after the date of the marriage by virtue of which he was legitimated.
- (2) The failure of the parents or either of them to furnish information as required by subsection (1) above in respect of any legitimated person shall not affect the legitimation of that person.
- (3) This section does not apply in relation to a person who was legitimated otherwise than by virtue of the subsequent marriage of his parents.
- (4) Any parent who fails to give information as required by this section shall be liable on summary conviction to a fine not exceeding £2.

## 10 Interpretation

- (1) In this Act, except where 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;
  - " existing ", in relation to an instrument, means one made before 1st January 1976 ;
  - " legitimated person " means a person legitimated or recognised as legitimated—
    - (a) under section 2 or 3 above ; or
    - (b) under section 1 or 8 of the Legitimacy Act 1926; or
    - (c) except in section 8, by a legitimation (whether or not by virtue of the subsequent marriage of his parents) recognised by the law of England and Wales and effected under the law of any other country ; and cognate expressions shall be construed accordingly;
  - " power of appointment " includes any discretionary power to transfer a beneficial interest in property without the furnishing of valuable consideration ;
  - " 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 and Wales.
- (2) For the purposes of this Act " legitimated person " includes, where the context admits, a person legitimated, or recognised as legitimated, before the passing of the Children Act 1975.
- (3) For the purpose of this Act, except where the context otherwise requires.—
  - (a) the death of the testator is the date at which a will or codicil is to be regarded as made ;
  - (b) an oral disposition of property shall be deemed to be contained in an instrument made when the disposition was made.
- (4) It is hereby declared that references in this Act to dispositions of property include references to a disposition by the creation of an entailed interest.

- (5) Except in so far as the context otherwise requires, any reference in this Act to an enactment shall be construed as a reference to that enactment as amended by or under any other 'enactment, including this Act.

## **11 Savings, amendments and repeals**

- (1) Schedule 1 to this Act, which contains savings and amendments to enactments consequential upon the provisions of this Act, shall have effect.
- (2) The enactments mentioned in Schedule 2 to this Act are hereby repealed to the extent specified in column 3 of that Schedule.

## **12 Short title, commencement and extent**

- (1) This Act may be cited as the Legitimacy Act 1976.
- (2) This Act shall come into force at the end of the period of one month beginning with the date on which it is passed.
- (3) This Act does not extend to Scotland or to Northern Ireland.

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*Status: This is the original version (as it was originally enacted).*

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## SCHEDULES

### SCHEDULE 1

Section 11.

#### SAVINGS AND CONSEQUENTIAL AMENDMENTS

##### *SAVINGS*

- 1 (1) Notwithstanding the repeal by this Act of sections 1 and 8 of the Legitimacy Act 1926 persons legitimated or recognised as legitimated under that Act shall continue to be legitimated or recognised as legitimated by virtue of section 1 or, as the case may be, section 8 of that Act.
- (2) In any enactment whether passed before or after this Act references to persons legitimated or recognised as legitimated under section 1 or section 8 of the Legitimacy Act 1926 or under section 2 or section 3 of this Act shall be construed as including references to persons legitimated or recognised as legitimated under section 2 or section 3 of this Act or under section 1 or section 8 of the said Act of 1926 respectively.
- 2 (1) The enactments repealed by Part II of Schedule 4 to the Children Act 1975 (which are superseded by section 5 of this Act) shall, notwithstanding those repeals, continue to have effect as respects existing instruments.
- In this sub-paragraph " instrument" has the same meaning as in section 5 of this Act.
- (2) Subject to paragraph (3)(b) below, nothing in this Act or in the Legitimacy Act 1926 (in so far as the effect of that Act is preserved by sub-paragraph (1) above) shall affect the operation or construction of any disposition coming into operation before 1st January 1927 or affect any rights under the intestacy of a person dying before that date.
- (3) Sub-paragraph (2) above shall apply in relation to a person to whom the said Act of 1926 applied by virtue of section 1(1) of the Legitimacy Act 1959 with the substitution for " 1st January 1927 " of " 29th October 1959 ".
- 3 Section 1 does not—
- (a) affect any rights under the intestacy of a person who died before 29th October 1959, or
- (b) affect the operation or construction of any disposition coming into operation before 29th October 1959 except so far as may be necessary to avoid the severance from a dignity or title of honour of property limited (expressly or not) to devolve (as nearly as the law permits) along with the dignity or title of honour.
- 4 (1) Section 1 of this Act, so far as it affects the succession to a dignity or title of honour, or the devolution of property limited as aforesaid, only applies to children born after 28th October 1959.

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- (2) Apart from section 1, nothing in this Act shall affect the succession to any dignity or title of honour or render any person capable of succeeding to or transmitting a right to succeed to any such dignity or title.
- (3) Apart from section 1, nothing in this Act shall affect the devolution of any property limited (expressly or not) to devolve (as nearly as the law permits) along with any dignity or title of honour.

This sub-paragraph applies only if and so far as a contrary intention is not expressed in the instrument, and shall have effect subject to the instrument.

5 It is hereby declared that nothing in this Act affects the Succession to the Throne.

#### CONSEQUENTIAL AMENDMENTS

##### Births and Deaths Registration Act 1953 (c.20)

6 In section 14 of the Births and Deaths Registration Act 1953 the following subsection is added at the end—

“(5) This section shall apply and be deemed always to have applied in relation to all persons recognised by the law of England and Wales as having been legitimated by the subsequent marriage of their parents whether or not their legitimation or the recognition thereof was effected under any enactment.”

##### Children Act 1975 (c.72)

7 In paragraph 1(4) of Schedule 1 to the Children Act 1975 for the words " These definitions of adoption and legitimation include " and " those effected" there are substituted respectively the words " This definition of adoption includes " and " an adoption effected ".

#### SCHEDULE 2

Section 11.

#### ENACTMENTS REPEALED

Chapter	Short Title	Extent of Repeal
<a href="#">16 &amp; 17 Geo.5. c. 60.</a>	Legitimacy Act 1926.	Sections 1(1) and (4). Sections 6, 7 and 8. Sections 10, 11 and 12. The Schedule.
<a href="#">5 &amp; 6 Eliz. 2. c. 39.</a>	Legitimation (Re-registration of Birth) Act 1957.	Section 1(1). Section 2.
<a href="#">7 &amp; 8 Eliz. 2. c. 73.</a>	Legitimacy Act 1959.	Section 1. In section 2, subsections (1) to (5). Section 6(4).
<a href="#">1969 c. 46.</a>	Family Law Reform Act 1969.	Section 16(2).

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Chapter	Short Title	Extent of Repeal
<a href="#">1975 c. 72.</a>	Children Act 1975.	<p>In section 8(9) the words from " and related " to the end.</p> <p>In Schedule 1, paragraphs 1(3), 12 and 13; in paragraph 14, sub-paragraphs (1) (b) and (2), and words " or is legitimated" in sub-paragraph (3)(d); and paragraph 15(1)(b).</p>