



# Law Reform (Parent and Child) (Scotland) Act 1986

## 1986 CHAPTER 9

### 1 <sup>F1</sup> Abolition of status of illegitimacy .]

<sup>F2</sup>( 1 ) No person whose status is governed by Scots law shall be illegitimate; and accordingly the fact that a person's parents are not or have not been married to each other shall be left out of account in—

- (a) determining the person's legal status; or
- (b) establishing the legal relationship between the person and any other person.]

(2) <sup>F3</sup>... Any reference (however expressed) in any enactment or deed to any relative shall, unless the contrary intention appears in the enactment or deed, be construed in accordance with subsection (1) above.

<sup>F4</sup>(3) .....

(4) Nothing in this section shall apply to the construction or effect of—

- (a) any enactment passed or made before the commencement of <sup>F5</sup> section 21 of the Family Law (Scotland) Act 2006 (asp 2) ];
- (b) any deed executed before such commencement;
- <sup>F6</sup>(c) .....

<sup>F7</sup>(5) In subsection (4), “ enactment ” includes an Act of the Scottish Parliament.

(6) It shall no longer be competent to bring an action for declarator of legitimacy, legitimation or illegitimacy.]

#### Textual Amendments

**F1** S. 1: title substituted (4.5.2006) by virtue of [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), **ss. 21(3)**, 46(2); [S.S.I. 2006/212](#), [art. 2](#) (with [art. 4](#))

**F2** S. 1(1) substituted (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), **ss. 21(2)(a)**, 46(2); [S.S.I. 2006/212](#), [art. 2](#) (with [art. 4](#))

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- F3** Words in s. 1(2) repealed (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), s. 46(2), **Sch. 3**; S.S.I. 2006/212, art. 2
- F4** S. 1(3) repealed (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), s. 46(2), **Sch. 3**; S.S.I. 2006/212, art. 2
- F5** Words in s. 1(4)(a) substituted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), **ss. 21(2)(b)**, 46(2); S.S.I. 2006/212, art. 2 (with art. 4)
- F6** S. 1(4)(c) repealed (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), s. 46(2), **Sch. 3**; S.S.I. 2006/212, art. 2
- F7** S. 1(5)(6) added (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), **ss. 21(2)(c)**, 46(2); S.S.I. 2006/212, art. 2 (with arts. 4, 9)

**Modifications etc. (not altering text)**

- C1** S. 1(1) excluded (1.11.1996) by 1995 c. 36, **s. 3(1)** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**
- C2** S. 1(1) applied (5.12.2005) by Civil Partnership Act 2004 (c. 33), **ss. 86(8)**, 263(3); S.S.I. 2005/604, art. 2(b)
- C3** S. 1(2) excluded (6.4.2003 with effect in accordance with s. 723(1)(a)(b)) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **ss. 721(6)(c)**, 723 (with Sch. 7)

**F8** .....

**Textual Amendments**

- F8** S. 2 repealed (1.11.1996) by 1995 c. 36, s. 105(5), **Sch. 5** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.** Table

**F9** .....

**Textual Amendments**

- F9** S. 3 repealed (1.11.1996) by 1995 c. 36, s. 105(5), **Sch. 5** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.** Table

**F10** .....

**Textual Amendments**

- F10** S. 4 repealed (1.11.1996) by 1995 c. 36, s. 105(5), **Sch. 5** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.** Table

**5 Presumptions.**

- (1) A man shall be presumed to be the father of a child—
  - (a) if he was married to the mother of the child at any time in the period beginning with the conception and ending with the birth of the child;
  - (b) where paragraph (a) above does not apply, if both he and the mother of the child have acknowledged that he is the father and he has been registered as

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such in any register kept under section 13 (register of births and still-births) or section 44 (register of corrections, etc.) of the <sup>M1</sup>Registration of Births, Deaths and Marriages (Scotland) Act 1965 or in any corresponding register kept under statutory authority in any part of the United Kingdom other than Scotland.

- (2) Subsection (1)(a) above shall apply in the case of a void, voidable or irregular marriage as it applies in the case of a valid and regular marriage.
- (3) Without prejudice to the effect under any rule of law which a decree of declarator in an action to which section 7 of this Act applies may have in relation to the parties, a decree of declarator in such an action shall give rise to a presumption to the same effect as the decree; and any such presumption shall displace any contrary presumption howsoever arising.
- (4) Any presumption under this section may be rebutted by proof on a balance of probabilities.

#### Marginal Citations

M1 1965 c. 49.

## 6 Determination of parentage by blood sample.

- (1) This section applies where, for the purpose of obtaining evidence relating to the determination of parentage in civil proceedings, a [<sup>F11</sup>sample of blood or other body fluid or of body tissue] is sought by a party to the proceedings or by a curator ad litem.
- (2) Where [<sup>F12</sup>such a] sample is sought from a [<sup>F13</sup>child under the age of 16 years], consent to the taking of the sample may be given by his [<sup>F14</sup>any person having parental responsibilities (within the meaning of section 1(3) of the Children (Scotland) Act 1995) in relation to him or having]care and control of him.
- (3) Where [<sup>F12</sup>such a] sample is sought from any person who is incapable of giving consent, the court may consent to the taking of the sample where—
  - (a) there is no person who is entitled to give such consent, or
  - (b) there is such a person, but it is not reasonably practicable to obtain his consent in the circumstances, or he is unwilling to accept the responsibility of giving or withholding consent.
- (4) The court shall not consent under subsection (3) above to the taking of [<sup>F12</sup>such a] sample from any person unless the court is satisfied that the taking of the sample would not be detrimental to the person's health.

#### Textual Amendments

- F11** Words substituted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 47\)](#), s. 70(3)(a)(4)
- F12** Words substituted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 47\)](#), s. 70(3)(b)(4)
- F13** Words in s. 6(2) substituted by [Age of Legal Capacity \(Scotland\) Act 1991 \(c. 50, SIF 49:8\)](#), s. 10(1), [Sch. 1 para. 42](#) (with s. 1(3)).

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**F14** Words in s. 6(2) substituted (1.11.1996) by 1995 c. 36, s. 105(5), **Sch. 5** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**

## 7 Actions for declarator.

- (1) An action for declarator of parentage, [<sup>F15</sup> or non-parentage ] may be brought in the Court of Session or the sheriff court.
- (2) Such an action may be brought in the Court of Session if and only if the child was born in Scotland or the alleged or presumed parent or the child—
  - (a) is domiciled in Scotland on the date when the action is brought;
  - (b) was habitually resident in Scotland for not less than one year immediately preceding that date; or
  - (c) died before that date and either—
    - (i) was at the date of death domiciled in Scotland; or
    - (ii) had been habitually resident in Scotland for not less than one year immediately preceding the date of death.
- (3) Such an action may be brought in the sheriff court if and only if—
  - (a) the child was born in the sheriffdom, or
  - (b) an action could have been brought in the Court of Session under subsection (2) above and the alleged or presumed parent or the child was habitually resident in the sheriffdom on the date when the action is brought or on the date of his death.
- (4) ..... <sup>F16</sup>
- (5) Nothing in any rule of law or enactment shall prevent the court making in any proceedings an incidental finding as to parentage, [<sup>F17</sup> or non-parentage ] for the purposes of those proceedings.
- (6) In this section “the alleged or presumed parent” includes a person who claims or is alleged to be or not to be the parent.

### Textual Amendments

- F15** Words in s. 7(1) substituted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), s. 46(2), **Sch. 2 para. 6(2)**; S.S.I. 2006/212, art. 2 (with art. 10)
- F16** S. 7(4) repealed Civil Evidence (Scotland) Act 1988 (c. 32, SIF 47), s. 10(1)(3), **Sch.**
- F17** Words in s. 7(5) substituted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), s. 46(2), **Sch. 2 para. 6(2)**; S.S.I. 2006/212, art. 2 (with art. 10)

### Modifications etc. (not altering text)

- C4** S. 7 extended (5. 4. 1993) by Child Support Act 1991 (c. 48, SIF 20), s. 28(1), (with s. 9(2)); S.I. 1992/2644, **art.2** (subject to transitional provisions as set out in art. 3, Sch.)

## 8 Interpretation.

In this Act, unless the context otherwise requires, the following expressions shall have the following meanings respectively assigned to them—

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“action for declarator” includes an application for declarator contained in other proceedings [F18 but does not include an appeal under section 20 (Appeals) of the Child Support Act 1991 made to the court by virtue of an order made under section 45 (jurisdictions of courts in certain proceedings) of that Act][F19 but does not include an appeal under section 20(1)(a) or (b) (Appeals) of the Child Support Act 1991 made to the court by virtue of an order made under section 45 (jurisdiction of the courts in certain proceedings) of that Act.];

F20

“the court” means the Court of Session or the sheriff;

F21

“deed” means any disposition, contract, instrument or writing whether inter vivos or mortis causa;

“non-parentage” means that a person is not or was not the parent, or is not or was not the child, of another person;

“parent” includes natural parent;

“parentage” means that a person is or was the parent, or is or was the child, of another person;

F22

F23

#### Textual Amendments

- F18** Words in s. 8 definition of "action for declarator" inserted (5.4.1993) by S.I. 1993/961, **art. 8**.
- F19** Words in s. 8 inserted (18.2.2003 coming into force in accordance with art. 1(2)) by virtue of [Child Support Appeals \(Jurisdiction of Courts\) \(Scotland\) Order 2003 \(S.S.I. 2003/96\)](#), arts. 1(2), 7
- F20** Definition repealed (1.11.1996) by 1995 c. 36, s. 105(5), **Sch. 5** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch. Table**
- F21** S. 8: definition of "curator" repealed by [Age of Legal Capacity \(Scotland\) Act 1991 \(c. 50, SIF 49:8\)](#), s. 10(2), **Sch. 2** (with s. 1(3)).
- F22** Definition repealed (1.11.1996) by 1995 c. 36, s. 105(5), **Sch. 5** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch. Table**
- F23** S. 8: definition of "tutor" repealed by [Age of Legal Capacity \(Scotland\) Act 1991 \(c. 50, SIF 49:8\)](#), s. 10(2), **Sch. 2** (with s. 1(3)).

#### Modifications etc. (not altering text)

- C5** S. 8: definition of "parental rights" applied by [Age of Legal Capacity \(Scotland\) Act 1991 \(c. 50, SIF 49:8\)](#), **s. 9** (with s. 1(3)).

## 9 Savings and supplementary provisions.

(1) Nothing in this Act shall—

- <sup>F24</sup>(a) .....
- (b) [<sup>F25</sup> subject to subsection (1A) below, ]except to the extent that Schedules 1 and 2 to this Act otherwise provide, affect the law relating to adoption of children;
- (c) apply to any title, coat of arms, honour or dignity transmissible on the death of the holder thereof or affect the succession thereto or the devolution thereof [<sup>F26</sup> (including, in particular, the competence of bringing an action of declarator of legitimacy, legitimation or illegitimacy in connection with such succession or devolution) ];

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- [<sup>F27</sup>(ca) affect the functions of the Lord Lyon King of Arms so far as relating to the granting of arms;]
- (d) affect the right of legitim out of, or the right of succession to, the estate of any person who died before the commencement of this Act.

[<sup>F28</sup>(1A) Subsections (1) and (2) of section 1 of this Act shall apply in relation to adopted children.]

- (2) The court may at any time vary or recall any order made under section 3 of this Act or consent given by it under section 6 of this Act.

#### Textual Amendments

- F24** S. 9(1)(a) repealed (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), s. 46(2), **Sch. 3**; S.S.I. 2006/212, art. 2
- F25** Words in s. 9(1)(b) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), s. 46(2), **Sch. 2 para. 6(3)(a)**; S.S.I. 2006/212, art. 2
- F26** Words in s. 9(1)(c) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), **ss. 21(4)(a)**, 46(2); S.S.I. 2006/212, art. 2 (with art. 4)
- F27** S. 9(1)(ca) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), **ss. 21(4)(b)**, 46(2); S.S.I. 2006/212, art. 2 (with art. 4)
- F28** S. 9(1A) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), s. 46(2), **Sch. 2 para. 6(3)(b)**; S.S.I. 2006/212, art. 2

## 10 Transitional provisions, amendments and repeals.

- (1) The enactments specified in Schedule 1 to this Act shall have effect subject to the amendments set out in that Schedule.
- (2) The enactments specified in Schedule 2 to this Act are hereby repealed to the extent set out in the third column of that Schedule.

## 11 Citation, commencement and extent.

- (1) This Act may be cited as the Law Reform (Parent and Child) (Scotland) Act 1986.
- (2) This Act shall come into operation on such day as the Secretary of State may appoint by order made by statutory instrument.
- (3) An order under subsection (2) above may contain such transitional provisions and savings as appear to the Secretary of State necessary or expedient in connection with the coming into operation of this Act.
- (4) This Act shall extend to Scotland only.

#### Modifications etc. (not altering text)

- C6** Power of appointment conferred by s. 11(2) fully exercised: 8.12.1986 appointed by S.I. 1986/1983, art. 2.

**Status:**

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**Changes to legislation:**

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