

ADOPTION AND CHILDREN ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Adoption

Chapter 4 – Status of Adopted Children

188. *Chapter 4* provides for the status of adopted children, thereby making clear how they are to be treated in law.

Section 66: Meaning of adoption in Chapter 4

189. *Section 66* sets out the meaning of “adoption” in Chapter 4. For the purpose of this Chapter adoption means adoption by adoption orders made in England, Wales, Scotland or Northern Ireland, the Channel Islands, the Isle of Man and countries outside the British Islands which have implemented the Hague Convention, overseas adoptions and adoptions recognised by the law of England and Wales and effected under the law of any other country. References to adoption in this Chapter are to adoptions effected after the date on which Chapter 4 comes into force. References in other enactments to an adopted person within the meaning of Chapter 4 include a reference to an adopted child under the Adoption Act 1976.

Section 67: Status conferred by adoption

190. *Section 67* provides for the determination of the legal status of an adopted child. *Subsection (1)* provides that the child is to be treated as if born as the child of the adopter or adopters. *Subsection (2)* provides that an adopted child is the legitimate child of the adopters or adopter and where a person is adopted by a couple or a partner of his parent, he is to be treated as if he had been born as the child of the relationship of that couple.
191. *Subsection (3)(a)* provides that in an adoption by the partner of a parent the adopted person is *only* to be treated in law as the child of the adopter and the partner of the adopter. In any other circumstances *subsection (3)(b)* provides that an adopted person is to be treated *only* in law as the child of the adopter or adopters. *Subsection (4)* provides that where the adopter is both a sole adopter and the natural parent, *subsection (3)(b)* is to have no effect with respect to anything dependant on the relationship to that parent, for example entitlement to property. A single parent may, for example, adopt his own child so that the child may cease to be illegitimate (although this now happens rarely).
192. *Subsection (5)* provides that this section has effect from the date of an adoption order being made in respect of an individual. *Subsection (6)* confirms that subject to the other provisions of Chapter 4 and Schedule 4, this section applies for the interpretation of enactments or instruments passed both before and after a person’s adoption and has effect as respects events taking place after the adoption order has been made.
193. The provisions in this section are intended only to clarify how an adopted child should be treated in law. They do not touch on the biological or emotional ties of an adopted child, nor are they intended to.

Section 68: Adoptive relatives

194. *Section 68* (1) and (2) enable a relationship that exists as a consequence of *section 67* to be described in law as an adoptive relationship. An adopter may be referred to as an adoptive parent or as an adoptive father or an adoptive mother depending on the circumstances of the case. However, it does not prevent any term not qualified by the word “adoptive” from being treated as including an adoptive relative.
195. *Subsection (3)* provides that where there is a reference to the adoptive mother and father of child, if the child has been adopted within a same sex relationship, whether by a couple or by the partner of a parent, the reference should be read as a reference to the child’s adoptive parents.

Section 69: Rules of interpretation for instruments concerning property

196. *Section 69* sets out the rules of interpretation for any instrument concerning the disposition of property. These rules are subject to any contrary indication and to Schedule 4 to the Act.
197. *Subsection (2)* applies where a disposition depends on the date of birth of a child or children of an adoptive parent(s). For the purposes of the disposition the adopted person is to be treated as having been born on the date of the adoption order. Where two or more people have been adopted on the same date they are to be treated as if they had both been born on that date but in the order of their actual births. *Subsection (3)* gives examples of phrases in wills on which *subsection (2)* can operate.
198. *Subsection (4)* allows an adopted person to retain certain interests vested in him before his adoption. *Subsection (5)* provides that, where it is necessary to determine for the purposes of a disposition of property whether a woman can have a child, it is to be presumed that when she has attained 55 years of age she will not adopt a child after the execution of the instrument, and if she does that child will not be treated either as her child or, if she is adopting as part of a couple, the child of the other one of the couple for the purposes of that instrument.

Section 70: Dispositions depending on date of birth

199. *Section 70* provides that where a child is born illegitimate and adopted by one of his natural parents as the sole adoptive parent, the date of his birth rather than the date of his adoption is taken into account in respect of entitlement to property. *Subsection (2)* sets out an example of when this might apply.

Section 71: Property devolving with peerages etc.

200. *Section 71* provides that adoption does not affect the descent of any peerage or dignity or title of honour or the devolution of any property devolving with such titles. Thus, unless there is a contrary intention expressed in the instrument, an adopted person cannot inherit such a title or any associated property from his adoptive parents. Likewise, the natural child of a Peer who is adopted will inherit a peerage, dignity or title of honour and any property devolving with such titles from his birth parents. *Subsection (3)* provides that exceptions may apply where a contrary intention is expressed in the instrument.

Section 72: Protection of trustees and personal representatives

201. *Section 72* provides for the protection of trustees or personal representatives who convey or distribute property in ignorance of the making or revocation of an adoption order.

Section 73: Meaning of disposition

202. *Section 73* defines the terms “disposition” and “power of appointment” for the purposes of Chapter 4. *Subsection (3)* confirms that the provisions of this Chapter apply equally to an oral disposition as to a written one. For the purposes of Chapter 4, *subsection (4)* provides that the date of death of the testator is the date a will or codicil is treated as being made and *subsection (5)* provides that the provisions of the law of intestate succession are to be treated as if they are contained in an instrument that the deceased executed while of full capacity immediately before his death.

Section 74: Miscellaneous enactments

203. *Section 74* provides that the general principle of *section 67* (that an adopted person is to be treated as if he had been born as the child of the adopter or adopters) is not to apply for the purposes of marriages within prohibited degrees of relationship or to incest, and for these purposes an adopted person remains part of his natural family. The only exception is that an adopted person cannot marry his adoptive parent, as this falls within the restrictions set out in the table of kindred and affinity in Schedule 1 to the Marriage Act 1949. Otherwise there are no restrictions on marriage within an adoptive family.
204. *Subsection (2)* lists other enactments which deal with questions of nationality and immigration, and to which the general principle of *section 67* is also not to apply.

Section 75: Pensions

205. *Section 75* provides that *section 67(3)*, (the rule that an adopted child is to be treated only as the child of the adopter(s) or, in the case of an adoption by a partner of a parent, only as the child of the adopter and the natural parent to whom he is a partner), does not affect an adopted person’s entitlement to a pension payable to or for his benefit which is in payment at the time of his adoption.

Section 76: Insurance

206. *Section 76* provides that any rights and liabilities under any insurance policy that a natural parent has effected for the payment on the death of his child of funeral expenses are transferred by virtue of the adoption of that child to the adoptive parents. The adopters are to be treated as if they took out the policy themselves. *Subsection (2)* makes clear that references in *subsection (1)* to adoptive parents are to be read, in the case of an adoption by a partner or a parent, as referring to the adopter and the other one of the couple.