



Adoption and Children Act 2002

2002 CHAPTER 38

PART 1

ADOPTION

CHAPTER 4

STATUS OF ADOPTED CHILDREN

66 Meaning of adoption in Chapter 4

- (1) In this Chapter “adoption” means—
- (a) adoption by an adoption order or a Scottish or Northern Irish adoption order,
 - (b) adoption by an order made in the Isle of Man or any of the Channel Islands,
 - (c) an adoption effected under the law of a Convention country outside the British Islands, and certified in pursuance of Article 23(1) of the Convention (referred to in this Act as a “Convention adoption”),
 - (d) an overseas adoption, or
 - (e) an adoption recognised by the law of England and Wales and effected under the law of any other country;
- and related expressions are to be interpreted accordingly.
- (2) But references in this Chapter to adoption do not include an adoption effected before the day on which this Chapter comes into force (referred to in this Chapter as “the appointed day”).
- (3) Any reference in an enactment to an adopted person within the meaning of this Chapter includes a reference to an adopted child within the meaning of Part 4 of the Adoption Act 1976 (c. 36).

67 Status conferred by adoption

- (1) An adopted person is to be treated in law as if born as the child of the adopters or adopter.
- (2) An adopted person is the legitimate child of the adopters or adopter and, if adopted by—
 - (a) a couple, or
 - (b) one of a couple under section 51(2),is to be treated as the child of the relationship of the couple in question.
- (3) An adopted person—
 - (a) if adopted by one of a couple under section 51(2), is to be treated in law as not being the child of any person other than the adopter and the other one of the couple, and
 - (b) in any other case, is to be treated in law, subject to subsection (4), as not being the child of any person other than the adopters or adopter;but this subsection does not affect any reference in this Act to a person's natural parent or to any other natural relationship.
- (4) In the case of a person adopted by one of the person's natural parents as sole adoptive parent, subsection (3)(b) has no effect as respects entitlement to property depending on relationship to that parent, or as respects anything else depending on that relationship.
- (5) This section has effect from the date of the adoption.
- (6) Subject to the provisions of this Chapter and Schedule 4, this section—
 - (a) applies for the interpretation of enactments or instruments passed or made before as well as after the adoption, and so applies subject to any contrary indication, and
 - (b) has effect as respects things done, or events occurring, on or after the adoption.

68 Adoptive relatives

- (1) A relationship existing by virtue of section 67 may be referred to as an adoptive relationship, and—
 - (a) an adopter may be referred to as an adoptive parent or (as the case may be) as an adoptive father or adoptive mother,
 - (b) any other relative of any degree under an adoptive relationship may be referred to as an adoptive relative of that degree.
- (2) Subsection (1) does not affect the interpretation of any reference, not qualified by the word “adoptive”, to a relationship.
- (3) A reference (however expressed) to the adoptive mother and father of a child adopted by—
 - (a) a couple of the same sex, or
 - (b) a partner of the child's parent, where the couple are of the same sex,is to be read as a reference to the child's adoptive parents.

69 Rules of interpretation for instruments concerning property

- (1) The rules of interpretation contained in this section apply (subject to any contrary indication and to Schedule 4) to any instrument so far as it contains a disposition of property.
- (2) In applying section 67(1) and (2) to a disposition which depends on the date of birth of a child or children of the adoptive parent or parents, the disposition is to be interpreted as if—
 - (a) the adopted person had been born on the date of adoption,
 - (b) two or more people 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 a person's age.
- (3) Examples of phrases in wills on which subsection (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. Subsection (2) will not affect the reference to the age of 21 years in example 2.
- (4) Section 67(3) does not prejudice—
 - (a) any qualifying interest, or
 - (b) any interest expectant (whether immediately or not) upon a qualifying interest.
“Qualifying interest” means an interest vested in possession in the adopted person before the adoption.
- (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—
 - (a) it must be presumed that once a woman has attained the age of 55 years she will not adopt a person after execution of the instrument, and
 - (b) if she does so, then (in spite of section 67) that person is not to be treated as her child or (if she does so as one of a couple) as the child of the other one of the couple for the purposes of the instrument.
- (6) In this section, “instrument” includes a private Act settling property, but not any other enactment.

70 Dispositions depending on date of birth

- (1) Where a disposition depends on the date of birth of a person who was born illegitimate and who is adopted by one of the natural parents as sole adoptive parent, section 69(2) does not affect entitlement by virtue of Part 3 of the Family Law Reform Act 1987 (c. 42) (dispositions of property).
- (2) Subsection (1) applies for example where—
 - (a) a testator dies in 2001 bequeathing a legacy to his eldest grandchild living at a specified time,
 - (b) his unmarried daughter has a child in 2002 who is the first grandchild,

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- (c) his married son has a child in 2003,
- (d) subsequently his unmarried daughter adopts her child as sole adoptive parent.

In that example the status of the daughter's child as the eldest grandchild of the testator is not affected by the events described in paragraphs (c) and (d).

71 Property devolving with peerages etc.

- (1) An adoption does not affect the descent of any peerage or dignity or title of honour.
- (2) An adoption does 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) Subsection (2) applies only if and so far as a contrary intention is not expressed in the instrument, and has effect subject to the terms of the instrument.

72 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 adoption has been effected or revoked if that fact could affect entitlement to the property.
- (2) A trustee or personal representative is not 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.

73 Meaning of disposition

- (1) This section applies for the purposes of this Chapter.
- (2) A disposition includes the conferring of a power of appointment and any other disposition of an interest in or right over property; and in this subsection a power of appointment includes any discretionary power to transfer a beneficial interest in property without the furnishing of valuable consideration.
- (3) This Chapter applies to an oral disposition as if contained in an instrument made when the disposition was made.
- (4) The date of death of a testator is the date at which a will or codicil is to be regarded as made.
- (5) The provisions of the law of intestate succession applicable to the estate of a deceased person are to be treated as if contained in an instrument executed by him (while of full capacity) immediately before his death.

74 Miscellaneous enactments

- (1) Section 67 does not apply for the purposes of—
 - (a) the table of kindred and affinity in Schedule 1 to the Marriage Act 1949 (c. 76),

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- (b) sections 10 and 11 of the Sexual Offences Act 1956 (c. 69) (incest), or
 - (c) section 54 of the Criminal Law Act 1977 (c. 45) (inciting a girl to commit incest).
- (2) Section 67 does not apply for the purposes of any provision of—
- (a) the British Nationality Act 1981 (c. 61),
 - (b) the Immigration Act 1971 (c. 77),
 - (c) any instrument having effect under an enactment within paragraph (a) or (b),
or
 - (d) any other provision of the law for the time being in force which determines British citizenship, British overseas territories citizenship, the status of a British National (Overseas) or British Overseas citizenship.

75 Pensions

Section 67(3) does not affect entitlement to a pension which is payable to or for the benefit of a person and is in payment at the time of the person's adoption.

76 Insurance

- (1) 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, then—
- (a) the rights and liabilities under the policy are by virtue of the adoption transferred to the adoptive parents, and
 - (b) for the purposes of the enactments relating to such societies and companies, the adoptive parents are to be treated as the person who took out the policy.
- (2) Where the adoption is effected by an order made by virtue of section 51(2), the references in subsection (1) to the adoptive parents are to be read as references to the adopter and the other one of the couple.