



Adoption Act 1976

1976 CHAPTER 36

PART IV

STATUS OF ADOPTED CHILDREN

38 Meaning of " adoption " in Part IV

- (1) In this Part " adoption " means adoption—
- (a) by an adoption order ;
 - (b) by an order made under the Children Act 1975, the Adoption Act 1958, the Adoption Act 1950 or any enactment repealed by the Adoption Act 1950;
 - (c) by an order made in Scotland, Northern Ireland, the Isle of Man or in any of the Channel Islands ;
 - (d) which is an overseas adoption; or
 - (e) which is an adoption recognised by the law of England and Wales and effected under the law of any other country,

and cognate expressions shall be construed accordingly.

- (2) The definition of adoption includes, where the context admits, an adoption effected before the passing of the Children Act 1975, and the date of an adoption effected by an order is the date of the making of the order.

39 Status conferred by adoption

- (1) An adopted child shall be treated in law—
- (a) where the adopters are a married couple, as if he had been born as a child of the marriage (whether or not he was in fact born after the marriage was solemnized);
 - (b) in any other case, as if he had been born to the adopter in wedlock (but not as a child of any actual marriage of the adopter).

- (2) An adopted child shall, subject to subsection (3), be treated in law as if he were not the child of any person other than the adopters or adopter.

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- (3) In the case of a child adopted by one of its natural parents as sole adoptive parent, subsection (2) has no effect as respects entitlement to property depending on relationship to that parent, or as respects anything else depending on that relationship.
- (4) It is hereby declared that this section prevents an adopted child from being illegitimate.
- (5) This section has effect—
 - (a) in the case of an adoption before 1st January 1976, from that date, and
 - (b) in the case of any other adoption, from the date of the adoption.
- (6) Subject to the provisions of this Part, this section—
 - (a) applies for the construction of enactments or instruments passed or made before the adoption or later, and so applies subject to any contrary indication ; and
 - (b) has effect as respects things done, or events occurring, after the adoption, or after 31st December 1975, whichever is the later.

40 Citizenship

- (1) Where an adoption order is made in relation to a child who is not a citizen of the United Kingdom and Colonies, but the adopter or, in the case of a joint adoption, the adoptive father is a citizen of the United Kingdom and Colonies, the child shall be a citizen of the United Kingdom and Colonies as from the date of the adoption.
- (2) In subsection (1) the reference to an adoption order includes a reference to an order authorising the adoption of a child in Scotland, Northern Ireland, the Isle of Man or in any of the Channel Islands.
- (3) Where a Convention adoption order, or a specified order ceases to have effect, either on annulment or otherwise, the cesser shall not affect the status as a citizen of the United Kingdom and Colonies of any person who, by virtue of this section or section 19 of the Adoption Act 1958, became such a citizen in consequence of the order.

41 Adoptive relatives

A relationship existing by virtue of section 39 may be referred to as an adoptive relationship, and—

- (a) a male adopter may be referred to as the adoptive father;
- (b) a female adopter may be referred to as the adoptive mother;
- (c) any other relative of any degree under an adoptive relationship may be referred to as an adoptive relative of that degree,

but this section does not prevent the term " parent", or any other term not qualified by the word " adoptive " being treated as including an adoptive relative.

42 Rules of construction for instruments concerning 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 it contains a disposition of property.
- (2) In applying section 39(1) to a disposition which depends on the date of birth of a child or children of the adoptive parent or parents, the disposition shall be construed as if—

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- (a) the adopted child had been born on the date of adoption,
- (b) two or more children 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 the age of a child.

- (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 39(2) does not prejudice any interest vested in possession in the adopted child before the adoption, or any interest expectant (whether immediately or not) upon an interest so vested.
- (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, it shall be presumed that once a woman has attained the age of 55 years she will not adopt a child after execution of the instrument, and, notwithstanding section 39, if she does so that child shall not be treated as her child or as the child of her spouse (if any) for the purposes of the instrument.
- (6) In this section, " instrument" includes a private Act settling property, but not any other enactment.

43 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 adopted by one of the natural parents as sole adoptive parent, section 42(2) does not affect entitlement under Part II of the Family Law Reform Act 1969 (illegitimate children).
- (2) Subsection (1) 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 adopted by the mother as sole adoptive parent,

and in all those cases the daughter's child remains the eldest grandchild of the testator throughout.

44 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 shall 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.

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- (3) Subsection (2) applies only if and so far as a contrary intention is not expressed in the instrument, and shall have effect subject to the terms of the instrument.

45 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 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.

46 Meaning of " disposition "

- (1) In this Part, unless 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;
 " power of appointment " includes any discretionary power to transfer a beneficial interest in property without the furnishing of valuable consideration.
- (2) This Part applies to an oral disposition as if contained in an instrument made when the disposition was made.
- (3) For the purposes of this Part, the death of the testator is the date at which a will or codicil is to be regarded as made.
- (4) For the purposes of this Part, 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.
- (5) It is hereby declared that references in this Part to dispositions of property include references to a disposition by the creation of an entailed interest.

47 Miscellaneous enactments, 48. Pensions

- (1) Section 39 does not apply for the purposes of the table of kindred and affinity in Schedule 1 to the Marriage Act 1949 or sections 10 and 11 (incest) of the Sexual Offences Act 1956.
- (2) Without prejudice to section 40, section 39 does not apply for the purposes of any provision of—
 (a) the British Nationality Acts 1948 to 1965,
 (b) the Immigration Act 1971,
 (c) any instrument having effect under an enactment within paragraph (a) or (b),
 or

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- (d) any other provision of the law for the time being in force which determines citizenship of the United Kingdom and Colonies.
 - (3) Section 39 shall not prevent a person being treated as a near relative of a deceased person for the purposes of section 32 of the Social Security Act 1975 (payment of death grant), if apart from section 39 he would be so treated.
 - (4) Section 39 does not apply for the purposes of section 70(3)(b) or section 73(2) of the Social Security Act 1975 (payment of industrial death benefit to or in respect of an illegitimate child of the deceased and the child's mother).
 - (5) Subject to regulations made under section 72 of the Social Security Act 1975 (entitlement of certain relatives of deceased to industrial death benefit), section 39 shall not affect the entitlement to an industrial death benefit of a person who would, apart from section 39, be treated as a relative of a deceased person for the purposes of the said section 72.
- 48** Section 39(2) does not affect entitlement to a pension which is payable to or for the benefit of a child and is in payment at the time of his adoption.

49 Insurance

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, the rights and liabilities under the policy shall by virtue of the adoption be transferred to the adoptive parents who shall for the purposes of the enactments relating to such societies and companies be treated as the person who took out the policy.