

SCHEDULES

SCHEDULE 1

STATUS CONFERRED BY ADOPTION OR LEGITIMATION IN ENGLAND AND WALES

PART II

ADOPTION ORDERS

Instruments and enactments concerning property

- 5 (1) Paragraph 3—
- (a) does not apply to an existing instrument or enactment so far as it contains a disposition of property, and
 - (b) does not apply to any public general Act in its application to any disposition of property in an existing instrument or enactment.
- (2) The repeal by this Act of sections 16 and 17 of the 1958 Act, and of provisions containing references to those sections, does not affect their application in relation to a disposition of property effected by an existing instrument.
- (3) For the purposes of this paragraph, and of paragraph 6, 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.
- 6 (1) Subject to any contrary indication, the rules of construction contained in this paragraph apply to any instrument, other than an existing instrument, so far as it contains a disposition of property.
- (2) In applying paragraph 3(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—
- (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 sub-paragraph (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.

Status: This is the original version (as it was originally enacted).

Note. Sub-paragraph (2) will not affect the reference to the age of 21 years in example 2.

- (4) Paragraph 3(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 fifty-five she will not adopt a child after execution of the instrument, and notwithstanding paragraph 3 if she does so the 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 paragraph " instrument" includes a private Act settling property, but not any other enactment.
- (7) Paragraph 3(6) has effect subject to this paragraph.