



Adoption Act 1976

1976 CHAPTER 36

PART IV **E+W**

STATUS OF ADOPTED CHILDREN

Modifications etc. (not altering text)

- C1** Part IV (ss. 38-49): definition applied (5.4.1993) by [Child Support Act 1991 \(c. 48, SIF 20\)](#), s. 26(3), (with s. 9(2)); [S.I. 1992/2644](#), art.2.
- C2** Pt. IV extended (30.12.2005) by [Adoption and Children Act 2002 \(c. 38\)](#), ss. 66(3), 148(1) (with Sch. 4 paras. 1, 6-8); [S.I. 2005/2213](#), art. 2(d)

38 Meaning of “adoption” in Part IV. **E+W**

(1) In this Part “adoption” means adoption—

- (a) by an adoption order;
- (b) by an order made under the ^{M1}Children Act 1975, the ^{M2}Adoption Act 1958, the ^{M3}Adoption Act 1950 or any enactment repealed by the Adoption Act 1950;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;
- [^{F1}(cc) which is a Convention adoption;]
- (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 ^{M4}Children Act 1975 [^{F2}but does not include an adoption of a kind mentioned in paragraphs (c) to (e) of subsection (1) effected on or after the day which is the appointed day for the purposes of Chapter 4 of Part 1 of the Adoption

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and Children Act 2002], and the date of an adoption effected by an order is the date of the making of the order.

Textual Amendments

- F1** S. 38(1)(cc) inserted (1.6.2003) by [Adoption \(Intercountry Aspects\) Act 1999 \(c. 18\)](#), **ss. 4(1)**, 18(3) (with s. 17); S.I. 2003/189, art. 2(2)(c)
- F2** Words in s. 38(2) inserted (30.12.2005) by [Adoption and Children Act 2002 \(c. 38\)](#), s. 148(1), **Sch. 3 para. 19** (with [Sch. 4 paras. 6-8](#)); S.I. 2005/2213, art. 2(o)

Marginal Citations

- M1** 1975 c. 72(49:3).
- M2** 1958 c. 5 (7 & 8 Eliz. 2).(49:11).
- M3** 1950 c. 26.
- M4** 1975 c. 72(49:3).

39 Status conferred by adoption. **E+W**

- (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 [^{F3}subsections (3) and (3A)], be treated in law as if he were not the child of any person other than the adopters or adopter.
- (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.
- [^{F4}(3A) Where, in the case of a Convention adoption, the High Court is satisfied, on an application under this subsection—
- (a) that under the law of the country in which the adoption was effected the adoption is not a full adoption;
 - (b) that the consents referred to in Article 4(c) and (d) of the Convention have not been given for a full adoption, or that the United Kingdom is not the receiving State (within the meaning of Article 2 of the Convention); and
 - (c) that it would be more favourable to the adopted child for a direction to be given under this subsection,
- the Court may direct that subsection (2) shall not apply, or shall not apply to such extent as may be specified in the direction.
- In this subsection “full adoption” means an adoption by virtue of which the adopted child falls to be treated in law as if he were not the child of any person other than the adopters or adopter.
- (3B) The following provisions of the ^{M5}Family Law Act 1986—
- (a) section 59 (provisions relating to the Attorney General); and
 - (b) section 60 (supplementary provision as to declarations),

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shall apply in relation to, and to an application for, a direction under subsection (3A) as they apply in relation to, and to an application for, a declaration under Part III of that Act.]

- (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.

Textual Amendments

- F3** Words in s. 39(2) substituted (1.6.2003) by Adoption (Intercountry Aspects) Act 1999 (c. 18), ss. 4(2), 18(3) (with s. 17); S.I. 2003/189, art. 2(2)(c)
- F4** S. 39(3A)(3B) inserted (1.6.2003) by Adoption (Intercountry Aspects) Act 1999 (c. 18), ss. 4(3), 18(3) (with s. 17); S.I. 2003/189, art. 2(2)(c)

Marginal Citations

- M5** 1986 c. 55

40^{F5} **E+W**

Textual Amendments

- F5** S. 40 repealed by British Nationality Act 1981 (c. 61, SIF 87), s. 52(8), Sch. 9

41 Adoptive relatives. **E+W**

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. **E+W**

- (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.

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- (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—
- (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. E+W

- (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 ^{M6}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.

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Marginal Citations

M6 1969 c. 46(49:7).

44 Property devolving with peerages etc. E+W

- (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.
- (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. E+W

- (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”. E+W

- (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.

^{F6}(5)

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Textual Amendments

- F6** S. 46(5) repealed (1.1.1997) by 1996 c. 47, s. 25(2), **Sch. 4** (with ss. 24(2), 25(4)); S.I. 1996/2974, **art. 2**

47 Miscellaneous enactments. **E+W**

- (1) Section 39 does not apply for the purposes of [F7 section 1 of and Schedule 1 to the Marriage Act 1949 or Schedule 1 to the Civil Partnership Act 2004 (prohibited degrees of kindred and affinity),] [F8 or sections 64 and 65 of the Sexual Offences Act 2003 (sex with an adult relative)].
- (2) F9 section 39 does not apply for the purposes of any provision of—
- [F10 the British Nationality Act 1981]
 - the M7 Immigration Act 1971,
 - any instrument having effect under an enactment within paragraph (a) or (b), or
 - any other provision of the law for the time being in force which determines [F10 British citizenship, British Dependent Territories citizenship[F11], the status of a British National (Overseas)] or British Overseas citizenship.]
- (3) F12
- (4) F13

Textual Amendments

- F7** Words in s. 47(1) substituted (5.12.2005) by Civil Partnership Act 2004 (Overseas Relationships and Consequential, etc. Amendments) Order 2005 (S.I. 2005/3129), art. 1, **Sch. 4 para. 3**
- F8** Words in s. 47(1) substituted (8.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(2)(e), **Sch. 15 para. 7**
- F9** Words repealed by British Nationality Act 1981 (c. 61, SIF 87), s. 52(8), **Sch. 9**
- F10** Words substituted by British Nationality Act 1981 (c. 61, SIF 87), s. 52(6), **Sch. 7**
- F11** Words inserted by S.I. 1986/948, art. 8, **Sch.**
- F12** S. 47(3) repealed by Social Security Act 1986 (c. 50, SIF 113:1), s. 86, **Sch. 11**
- F13** S. 47(4)(5) repealed by Social Security Act 1988 (c. 7, SIF 113:1), ss. 16, 19(3), **Sch. 5**

Modifications etc. (not altering text)

- C3** S. 47 restricted by Sexual Offences Act 2003 (c. 42), s. 64(6)(a) (as inserted (8.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(2)(e), **Sch. 15 para. 5(5)**)
- C4** S. 47 restricted by Sexual Offences Act 2003 (c. 42), s. 65(6)(a) (as inserted (8.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(2)(e), **Sch. 15 para. 6(5)**)

Marginal Citations

- M7** 1971 c. 77(62).

48 Pensions. **E+W**

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.

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49 Insurance. **E+W**

Where a child is adopted whose natural parent has effected an insurance with a friendly society or a collecting society or an industrial 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.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Blanket Amendment words substituted by [2005 c. 4 Sch. 11 para. 1\(2\)](#) (Amendment not applied to legislation.gov.uk. The relevant references were repealed before the amendment came into force.)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 3(6A)(6B) inserted by [1999 c. 18 s. 10](#) (This amendment not applied to legislation.gov.uk. S. 10 repealed (30.4.2003 for W., 1.6.2003 for E.) without ever being in force by 2000 c. 14, ss. 117(2), 122, Sch. 6; S.I. 2003/501, art. 2(3)(b); S.I. 2003/365, art. 3(6)(a))
- s. 13(4) inserted by [1999 c. 18 s. 11](#) (This amendment not applied to legislation.gov.uk. S. 11 ceases to have effect (E.W.) (30.12.2005) by virtue of 2002 c. 38, ss. 139, 148(1), Sch. 3 para. 95 (with Sch. 4 paras. 6-8); S.I. 2005/2213, art. 2(o))
- s. 52(1)(c) power to extend conferred by [2002 c. 38 Sch. 4 para. 16\(1\)\(a\)](#)
- s. 52(1A) inserted by [2002 c. 38 Sch. 4 para. 15\(a\)](#)
- s. 56(4)-(6) inserted by [2002 c. 38 Sch. 4 para. 11\(b\)](#)