



# Legitimation (Scotland) Act 1968

## 1968 CHAPTER 22

An Act to amend and codify the law of Scotland relating to the legitimation of illegitimate persons by the subsequent marriage of their parents; to make provision in relation to the recognition under the law of Scotland of legitimation effected under foreign law and to the effects of such recognition; and for connected purposes. [8th May 1968]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### **1 Requirements and effects of legitimation**

Where the parents of an illegitimate person marry each other after the commencement of this Act, then if—

- (a) the father of the said person is domiciled in Scotland at the date of the marriage, and
- (b) the said person is living at that date,

the marriage shall, subject to the provisions of this Act, render that person legitimate with effect from the date of the marriage and confer on him the rights, and impose on him the obligations, of a legitimate person with effect from that date.

### **2 Scope of rights and obligations arising on legitimation**

- (1) Subject to the provisions of this section, the legitimation of a person shall not confer any status or right, or impose any obligation, on that or any other person in respect of any time previous to the date of the legitimation.
- (2) A person shall not be entitled, by virtue of his legitimation or of the legitimation of any other person—
  - (a) to any right in the intestate estate of a person dying after the commencement of this Act and before the date of the legitimation, or

- (b) to legitim out of the estate of a person dying as aforesaid.
- (3) The legitimation of a person shall not affect any right under a deed coming into operation after the commencement of this Act if that right has become indefeasibly vested in any other person before the date of the legitimation.
- (4) Subject to the provisions of subsection (3) above—
  - (a) a legitimated person shall be entitled to any right under a deed coming into operation after the commencement of this Act, being a right his entitlement to which depends on his legitimacy, and
  - (b) a person other than the legitimated person shall be entitled to any right under such a deed, being a right his entitlement to which depends on the legitimacy of the legitimated person.
- (5) Without prejudice to the foregoing provisions of this section, any reference (however expressed) in any deed coming into operation after the commencement of this Act to a child, or to issue, of a marriage shall be construed as including a reference—
  - (a) in either case, to any child legitimated by that marriage, and
  - (b) where the reference is to issue, to the issue, being legitimated persons, of any child of that marriage (including such issue of any child legitimated by that marriage).
- (6) Without prejudice to the provisions of sections 23 and 24 of the Succession (Scotland) Act 1964 and of section 6(2) below, where any right is conferred or any obligation is imposed, whether by operation of law or under any deed coming into operation after the commencement of this Act, by reference to the relative seniority of the members of a class of persons, and that right is conferred or that obligation is imposed in terms which indicate that the class is one consisting of legitimate persons only, then—
  - (a) any member of that class who is a legitimated person shall rank as if he had been born on the date of his legitimation, and
  - (b) if two or more members of that class are legitimated persons whose dates of legitimation are the same, they shall rank as between themselves in accordance with their respective times of birth.
- (7) Subject to the foregoing provisions of this section, the legitimation of a person shall enure to the benefit of any other person claiming any right arising after the commencement of this Act, being a right his entitlement to which depends on the legitimacy of the legitimated person.
- (8) Subsection (1) above shall apply only in relation to the legitimation of a person by or under this Act.

### **3 Rights and obligations arising where parents of deceased illegitimate person marry**

- (1) Where—
  - (a) an illegitimate person has died or dies, whether before or after the commencement of this Act, and
  - (b) that person would, if he had not died, have been legitimated on any date before or after such commencement or (by virtue of section 4 below) at such commencement,

the provisions of this Act shall apply for the purpose of determining the rights and obligations of any person living at or after the relevant date as if the illegitimate person had been legitimated with effect from that date.

- (2) In subsection (1) above, the expression " the relevant date " means—
- (a) the date which would have been the date of the legitimation of the illegitimate person, if that date occurs after the commencement of this Act;
  - (b) in any other case, the date of such commencement.

#### **4 Legitimation of certain persons who were not legitimated by the marriage of their parents, etc.**

Where—

- (a) the parents of an illegitimate person have married each other before the commencement of this Act, and
- (b) the father of the said person was domiciled in Scotland at the date of the marriage, and
- (c) that person was living at the date of the marriage, but
- (d) by reason of the existence at any time previous to the marriage of an impediment thereto, the marriage did not, according to the law in force immediately before the commencement of this Act, render that person legitimate,

then, subject to the provisions of this Act—

- (i) if the illegitimate person is living at the commencement of this Act, the marriage shall render that person legitimate with effect from the date of such commencement and confer on him the rights, and impose on him the obligations, of a legitimate person with effect from that date;
- (ii) if the illegitimate person is not living at the commencement of this Act, the provisions of this Act shall apply for the purpose of determining the rights and obligations of any person living at or after the date of such commencement as if the illegitimate person had been legitimated with effect from that date.

#### **5 Provisions relating to recognition of foreign legitimation**

- (1) In this Act, unless the context otherwise requires—
- (a) references to the legitimation of a person shall (subject to paragraph (b) below) be construed as including references to the recognition under the law of Scotland, whether before or after the commencement of this Act, of a person as being legitimated under the law of a country or territory outside Scotland by the subsequent marriage of his parents ;
  - (b) references to the legitimation of a person under this Act shall be construed as including references to the recognition, after the commencement of this Act, of a person as being legitimated as aforesaid ;
  - (c) subject to the provisions of subsection (3) below, references to the date of the legitimation of a person shall, in relation to a person recognised as being legitimated as aforesaid, be construed as references to the date which his legitimation was or is recognised as having effect from;
- and " legitimated " shall be construed accordingly.
- (2) Where after the commencement of this Act any person is legitimated under the law of a country or territory outside Scotland, the fact that the father of that person was at

any time previous to his marriage to the mother of that person domiciled in a country or territory in which legitimation by subsequent marriage was not permitted by law shall not prevent the recognition of that person as being legitimated.

- (3) A person legitimated after the commencement of this Act under the law of a country or territory outside Scotland shall not be recognised as being legitimated with effect from a date earlier than that on which his legitimation occurs.
- (4) For the purposes of this section a person legitimated under the law of a country or territory outside Scotland shall be deemed to be so legitimated by the subsequent marriage of his parents in any case where, under the law of the country or territory in question, the marriage of his parents was a condition necessary to his legitimation.

## **6 Additional provisions where legitimated person had previously been adopted by one or both parents**

- (1) Where any person who has been adopted by his father and mother before the commencement of this Act is legitimated by virtue of section 4 above, the court by which the adoption order was made may, on the application of any of the parties concerned, revoke that order.
- (2) The revocation of an adoption order under this section, or under section 26 of the Adoption Act 1958, shall not affect the operation of sections 23 and 24 of the Succession (Scotland) Act 1964 in relation to an intestacy which occurred, or a deed which came into operation, before the revocation.
- (3) This section shall be construed as one with section 26 of the Adoption Act 1958 ; and any reference in that Act to that section or to subsection (1) of that section shall be construed as including a reference to subsection (1) of this section.

## **7 Savings**

- (1) The operation of any deed shall be affected by this Act only in so far as, in the construction of the deed, no contrary intention appears.
- (2) The legitimation of any person—
  - (a) by virtue of section 4 of this Act, or
  - (b) under this Act, if he would not have been legitimated had this Act not been passed,shall not confer any right on that or any other person under a deed which came into operation before the commencement of this Act.
- (3) Subject to the provisions of subsection (2) above, where any person has been or is legitimated, any question as to the entitlement of that or any other person to a right under a deed which came into operation before the commencement of this Act shall, in so far as such entitlement depends on the legitimacy of the legitimated person, be determined in accordance with the law in force immediately before such commencement.

## **8 Interpretation**

- (1) In this Act, unless the context otherwise requires—

" deed " includes any disposition, contract, instrument or writing, whether *inter vivos* or *mortis causa*;

" intestate estate " means so much of the estate of a person who has died as is undisposed of by testamentary disposition;

" marriage " includes putative marriage and voidable marriage.

- (2) In this Act, unless the context otherwise requires, references to the legitimation of a person shall be construed as references to the legitimation of a person (whether by or under this Act or before the commencement thereof) by the subsequent marriage of his parents, and " legitimated " shall be construed accordingly.
- (3) For the purposes of this Act a deed made in the exercise of a special power of appointment shall be deemed to come into operation at the date on which the deed creating the power came into operation.
- (4) The provisions of this Act shall have effect in relation to any question as to the succession to, or devolution of, any title, honour or dignity after the commencement of this Act as if the right to succeed to that title, honour or dignity were a right under a deed coming into operation after such commencement and as if the title, honour or dignity devolved in accordance with such a deed.
- (5) Any reference in this Act to any other enactment shall be construed as a reference to that enactment as amended by any subsequent enactment, including this Act.

## **9 Short title, extent and commencement**

- (1) This Act may be cited as the Legitimation (Scotland) Act 1968.
- (2) This Act shall extend to Scotland only.
- (3) This Act shall come into operation on the expiration of the period of one month beginning with the date on which it is passed.