

# INHERITANCE AND TRUSTEES' POWERS ACT 2014

---

## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Section 5: presumption of prior death*

34. Section 18(2) of the Family Law Reform Act 1987 operates where a person dies intestate and his or her parents were not married to each other at the time of his or her birth. The rule does not apply to those whose parents later married or whose birth would otherwise be regarded in law as legitimate or legitimated (see Family Law Reform Act 1987, s 1; Legitimacy Act 1976, ss 2, 2A, 3, 4 and 10). In such cases, the administrators may presume that the intestate was predeceased by his or her father and also by any other person to whom the intestate was related only through his or her father. In the case of a person who has a female parent other than his or her mother by virtue of section 43 of the Human Fertilisation and Embryology Act 2008, the administrators may proceed on the basis that the deceased was not survived by the second female parent or any person related only through the second female parent (see the Family Law Reform Act 1987, s 18(2A)). The presumption operates “unless the contrary is shown”.
35. [Section 5](#) amends section 18 of the 1987 Act by adding a new subsection (2ZA), which disapplies section 18(2) in certain circumstances. Those circumstances are that a person is recorded as the intestate’s father, or as a parent (other than the mother) of the intestate in a register of births kept (or having effect as if kept) under the Births and Deaths Registration Act 1953, or in a record of births included in an index kept under section 30(1) of that Act. The reference to “a parent (other than the mother)” addresses the possibility of registration as a second female parent of a child in the circumstances set out in section 43 of the Human Fertilisation and Embryology Act 2008. The reference to indexes kept under section 30(1) of the 1953 Act is to cater for the fact that births may be recorded in registers which are not kept under the 1953 Act but are included in a searchable index kept under the Act. Examples include the marine register, the air register book of births and deaths, the hovercraft register book of births and deaths, and the service departments registers.