

# INHERITANCE AND TRUSTEES' POWERS ACT 2014

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Section 4: adoption and contingent interests*

30. **Section 4** concerns the rights of an adopted child to the estate of a parent who had died before the adoption. The general rule, set out in section 67(3) of the Adoption and Children Act 2002, is that after adoption the child is regarded for all purposes as the legal child of the adopter or adopters, and has no other legal parents. This can have consequences for the child's interests in property, where those interests depend on the legal relationship between the child and the former legal parent or parents.
31. Section 69(4) of the Adoption and Children Act 2002 contains exceptions to this rule. In particular, interests which are already vested in possession in the adopted child are not affected by adoption: for example, an inheritance by will which was left in such a way as to give the child an unconditional entitlement. Subsection (1) of section 4 adds a further category of interest which is not affected by adoption, by adding a new paragraph (c) to section 69(4). It applies where that adoption occurs on or after the date on which the section comes into force (subsection (2)).
32. New paragraph (c) applies where, immediately before adoption, the child's then legal parent has already died and some or all of that parent's estate is held on trust – whether created by will or arising on intestacy – by which the child has a contingent interest which is not in remainder. Its effect is that the child's interest in that parent's estate is not affected by the change in the child's legal parentage on adoption.
33. A contingency is a condition which must be fulfilled before the beneficiary has an absolute entitlement. For example, if a child's parent died intestate with no other surviving family members, under the intestacy rules the whole estate would pass to the child contingent on reaching the age of 18. Such an interest is preserved by new paragraph (c) despite the adoption. Paragraph (c) does not apply if the contingent interest is in remainder to another beneficiary's interest. Contingent interests in remainder no longer arise under the intestacy rules, but may be created by will. For example, a parent makes a will leaving his or her estate in trust so that X has a right to the income for life and subject to that the child will take the estate if he or she reaches 25. The child's interest is contingent, but (if X is living at the date of the adoption) it is in remainder to X's interest and therefore not preserved by new paragraph (c).