



Isle of Man

Ellan Vannin

AT 10 of 1985

LEGITIMACY ACT 1985



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**Isle of Man***Ellan Vannin*

LEGITIMACY ACT 1985

Received Royal Assent: 19 June 1985
Passed: 9 July 1985
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AN ACT to revise the law relating to legitimacy; to amend the law relating to illegitimate children and others; and for connected purposes.

PART I – LEGITIMACY AND LEGITIMATION

Legitimacy of children of certain void marriages

1 Legitimacy of children of certain void marriages

[P1976/31/1]

- (1) The child of a void marriage, whenever born, shall be treated as the legitimate child of his parents if —
 - (a) at the time of the act of intercourse resulting in the birth (or at the time of the celebration of the marriage if later) both or either of the parties reasonably believed that the marriage was valid; and
 - (b) the father of the child was domiciled in the Island at the time of the birth or, if he died before the birth, was so domiciled immediately before his death.
- (2) It is hereby declared for the avoidance of doubt that subsection (1) applies notwithstanding that the belief that the marriage was valid was due to a mistake as to law.
- (3) In relation to a child born after the commencement of this Act, it shall be presumed for the purposes of subsection (1) that one of the parties to the void marriage reasonably believed at the time of the act of intercourse resulting in the birth of the child (or at the time of the celebration of the marriage if later) that the marriage was valid, unless the contrary is shown.

*Legitimation***2 Legitimation by parents' subsequent marriage**

- (1) An illegitimate person, if living, is rendered legitimate by the subsequent marriage of his parents, if his father is at the date of the marriage domiciled in the Island.
- (2) The date of legitimation under this section is the date of the marriage.
- (3) This section has effect subject to the provisions of Schedule 1 in relation to persons born before the commencement of this Act.

3 Legitimation by extraneous law

[P1976/31/3]

Where the parents of an illegitimate person marry one another and the father of the illegitimate person is not at the time of the marriage domiciled in the Island but is domiciled in a country by the law of which the illegitimate person became legitimated by virtue of such subsequent marriage, that person, if living, shall in the Island be recognised as having been so legitimated from the date of the marriage notwithstanding that, at the time of his birth, his father was domiciled in a country the law of which did not permit legitimation by subsequent marriage.

4 Legitimation of adopted child

[P1976/31/4]

- (1) Section 29 of the *Adoption Act 1984* does not prevent an adopted child being legitimated under section 2 or 3 if either natural parent is the sole adoptive parent.
- (2) Where an adopted child (with a sole adoptive parent) is legitimated —
 - (a) section 29(2) of that Act shall not apply after the legitimation to the natural relationship with the other natural parent; and
 - (b) revocation of the adoption order in consequence of the legitimation shall not affect section 29, 30 or 31 of that Act as it applies to any instrument made before the date of legitimation.

5 Rights of legitimated persons and others to take interests in property

[P1976/31/5 and 6]

- (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 the instrument contains a disposition of property.
- (2) For the purposes of this section, 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.

- (3) A legitimated person, and any other person, shall be entitled to take any interest as if the legitimated person had been born legitimate.
- (4) A disposition which depends on the date of birth of a child or children of the parent or parents shall be construed as if —
- (a) a legitimated child had been born on the date of legitimation;
 - (b) 2 or more legitimated children legitimated 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.
- (5) Examples of phrases in wills on which subsection (4) 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 (4) will not affect the reference to the age of 21 years in example 2.
- (6) If an illegitimate person or a person adopted by one of his natural parents dies, or has died before the commencement of this Act, and —
- (a) after his death his parents marry or have married; and
 - (b) he would, if living at the time of the marriage, have become a legitimated person,
- this section shall apply for the construction of the instrument so far as it relates to the taking of interests by, or in succession to, his spouse or his civil partner, his children and his remoter issue as if he had been legitimated by virtue of the marriage.¹
- (7) Where a disposition depends on the date of birth of an adopted child who is legitimated (or, if deceased, is treated as legitimated) subsection (4) does not affect entitlement by virtue of section 31(2) of the *Adoption Act 1984*.
- (8) Where a disposition depends on the date of birth of a child who was born illegitimate and is legitimated (or, if deceased, is treated as legitimated), subsection (4) does not affect entitlement under Part II, or under any enactment amended by this Act.
- (9) In this section “disposition” includes the conferring of a power of appointment and any other disposition of an interest in or right over property.

6 Personal rights and obligations

[P1976/31/8]

A legitimated person shall have the same rights, and shall be under the same obligations in respect of the maintenance and support of himself or of any other person as if he had been born legitimate, and, subject to the provisions of this Act, the provisions of any enactment relating to claims for damages, compensation, allowance, benefit or otherwise by or in respect of a legitimate child shall apply in like manner in the case of a legitimated person.

PART II – PROPERTY RIGHTS OF ILLEGITIMATE CHILDREN

7 [Repealed]²

8 References in dispositions to children and other relatives

[P1969/46/15]

- (1) In any disposition made after the commencement of this Act –
 - (a) any reference (whether express or implied) to the child or children of any person shall, unless the contrary intention appears, be construed as, or as including, a reference to any illegitimate child of that person; and
 - (b) any reference (whether express or implied) to a person or persons related in some other manner to any person shall, unless the contrary intention appears, be construed as, or as including, a reference to anyone who would be so related if he, or some other person through whom the relationship is deduced, had been born legitimate.
- (2) [Repealed]³
- (3) Where under any disposition any property is limited to devolve with a dignity or title of honour, then, whether or not the disposition contains an express reference to the dignity or title of honour, and whether or not the property or some interest in the property may in some event become severed therefrom, nothing in this section shall operate to sever the property or any interest therein from the dignity or title, but the property or interest shall devolve in all respects as if this section had not been enacted.
- (4) There is hereby abolished, as respects dispositions made after the commencement of this Act, any rule of law that a disposition in favour of illegitimate children not in being when the disposition takes effect is void as contrary to public policy.
- (5) In this section “disposition” means a disposition of any property whether inter vivos or by will or codicil; and a disposition by will or codicil executed before the commencement of this Act shall not be treated for

the purposes of this section as made on or after such commencement by reason only that the will or codicil is confirmed by a codicil executed on or after such commencement.

PART III – SUPPLEMENTAL

9 Protection of trustees and personal representatives

[P1969/46/17; P1976/31/7]

- (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 –
 - (a) whether any person is illegitimate or has been adopted by one of his natural parents and could be legitimated (or, if deceased, be treated as legitimated), if that fact could affect entitlement to the property; or
 - (b) whether there is a person who is or may be entitled to any interest in the property by virtue of –
 - (i) section 8;
 - (ii) [Repealed]⁴
 - (iii) section 16 of the *Wills Act 1985*, by reason of subsection (4)(a) of that section.
- (2) A trustee or personal representative shall not be liable to any such person by reason of a conveyance or distribution of the property made without regard to any such fact or claim, if he has not received notice of that fact or claim 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.

10 Presumptions as to legitimacy etc

[1971/26/18]

Any presumption of law as to the legitimacy or illegitimacy of any person may in any civil proceedings be rebutted by evidence that it is more probable than not that that person is illegitimate or legitimate, and it shall not be necessary to prove that fact beyond reasonable doubt in order to rebut the presumption.

10A Declarations as to parentage etc

[P1986/55/56; P1987/42/22]

- (1) Any person may apply to the High Court for a declaration –
 - (a) that a person named in the application is or was his parent; or
 - (b) that he is the legitimate child of his parents.

- (2) Any person may apply to the High Court for one (or for one or, in the alternative, the other) of the following declarations —
- (a) that he has become a legitimated person;
 - (b) that he has not become a legitimated person.
- (3) The High Court shall have jurisdiction to entertain an application under this section if, and only if, the applicant —
- (a) is domiciled in the Island on the date of the application; or
 - (b) has been habitually resident in the Island throughout the period of one year ending with that date.
- (4) The following provisions of the *Matrimonial Proceedings Act 2003* —
- (a) section 20 (general provisions as to declarations),
 - (b) section 22(2) to (5) (intervention by Attorney General), and
 - (c) section 136 (polygamous marriages) where the proceedings involve a determination as to the validity of a marriage,
- apply to proceedings under this section with the substitution, for references to section 19 or Part 1 of that Act, of references to this section.⁵
- (5) In this section “legitimated person” includes a person legitimated under the customary law.⁶

11 Interpretation

[P1976/31/10]

- (1) In this Act —

“**the customary law**” means the law contained in replies given by the Deemsters and Keys on the 24th June 1594;

“**existing**”, in relation to an instrument, means one made before the commencement of this Act;

“**instrument**” includes an enactment settling property, but not any other enactment;

“**legitimated person**” means a person legitimated or recognised as legitimated —

- (a) under section 2 or 3; or
- (b) except in section 6, by a legitimation (whether or not by virtue of the subsequent marriage of his parents) recognised by the law of the Island and effected under the law of any other country;

and cognate expressions shall be construed accordingly;

“**power of appointment**” includes any discretionary power to transfer a beneficial interest in property without the furnishing of valuable consideration;

“**void marriage**” means a marriage, not being voidable only, in respect of which the High Court has or had jurisdiction to grant a decree of nullity, or would have or would have had such jurisdiction if the parties were or had been domiciled in the Island.

- (2) For the purposes of this Act, except where the context otherwise requires, —
 - (a) the death of the testator is the date at which a will or codicil is to be regarded as made;
 - (b) an oral disposition of property shall be deemed to be contained in an instrument made when the disposition was made.
- (3) References in this Act to property limited to devolve with a dignity or title of honour are to property limited, whether expressly or not, and whether or not subject to any preceding limitation or charge, to devolve (as nearly as the law permits) along with the dignity or title of honour.

12 Savings, transitional provisions and amendments

- (1) Schedule 2 (savings and transitional provisions) shall have effect.
- (2) The enactments specified in Schedule 3 are amended in accordance with that Schedule.
- (3) [Repealed]⁷

13 Short title and commencement

- (1) This Act may be cited as the Legitimacy Act 1985.
- (2) This Act shall come into operation on the 1st January 1986.

SCHEDULE 1

LEGITIMATION OF PERSONS BORN BEFORE COMMENCEMENT

Section 2(3)

Persons born before 11th June 1928

1. Except as provided by paragraph 2, section 2 shall not apply, and the customary law shall continue to apply, to a person born before the 11th June 1928, and nothing in this Act affects the legitimation of such a person under that law.
2. (1) Section 2(1) applies to an illegitimate person born before the 11th June 1928, whose parents married before that date but more than 2 years after his birth, unless his father or mother was at the time of his birth married to a third party.
(2) The date of legitimation under this paragraph was the 5th July 1933.

Persons born on or after 11th June 1928

[1973/6/1(1)]

3. (1) Section 2(1) applies to a person born on or after the 11th June 1928 and before the commencement of this Act —
(2) The date of legitimation under this paragraph is —
 - (a) in the case of a person born before the 16th October 1962, whose father or mother was at the time of the birth married to a third party, the 17th April 1973 or the date of the marriage of his parents, if later;
 - (b) in any other case, the date of the marriage of his parents.

SCHEDULE 2

SAVINGS AND TRANSITIONAL PROVISIONS

Section 12(1)

Legitimation under customary law

1. Nothing in Part I affects any rights of a person born before the 11th July 1928 and legitimated under the customary law, and notwithstanding the repeal of that law by the *Legitimacy Act 1928*, that law shall continue in force with respect to such person.

Legitimacy of child of void marriage

2. (1) Section 1 does not affect any rights under the intestacy of a person dying before the 16th October 1962.

(2) Section 1 does not affect the operation or construction (except so far as necessary to avoid the severance from a dignity or title of honour of property limited to devolve with it) of any disposition coming into operation before the 16th October 1962.

(3) Section 1, so far as it affects the succession to a dignity or title of honour, or the devolution of property limited to devolve therewith, only applies to a child born on or after the 16th October 1962.

Effect of legitimation on peerages etc.

3. (1) Apart from section 1, nothing in Part I affects —
- (a) the succession to a dignity or title of honour, or
 - (b) the devolution of property limited to devolve with a dignity or title of honour.

(2) Sub-paragraph (1)(b) applies only if and so far as a contrary intention is not expressed in the instrument under which the property devolves, and has effect subject to such instrument.

Past legitimations

[1973/6/2(2)]

4. Nothing in section 2 affects the operation or construction of any disposition coming into operation, or any rights under the intestacy of a person dying, before —
- (a) the 11th June 1928, in relation to a person legitimated on or after that date;
 - (b) the 16th October 1962, in relation to a person legitimated on or after that date, whose father or mother was at the time of his birth married to a third party;
 - (c) the 17th April 1973, in relation to a person born on or after the 11th June 1928 and before the 16th October 1962 and legitimated on or after the 17th April 1973, whose father or mother was at the time of his birth married to a third party.

Interests under existing instruments

5. (1) In this paragraph “instrument” shall be construed in accordance with section 5.
- (2) This paragraph has effect subject to paragraphs 1 to 4.
- (3) The following provisions have effect as respects existing instruments —
- (a) the legitimation of a person does not enable him or his spouse, civil partner, children or remoter issue to take any interest in property except as provided below;⁸
 - (b) a legitimated person and his spouse, civil partner, children and remoter issue are entitled to take any interest under any disposition coming into operation, or any rights under the

intestacy of a person dying, after the date of legitimation, as if he had been born legitimate;⁹

- (c) where a legitimated person or his child or remoter issue dies intestate in respect of any property, the same person or persons shall be entitled to take the same interests therein as if the legitimated person had been born legitimate;
- (d) section 5(4) and (5) applies as it applies to an instrument other than an existing instrument but subject to any contrary indication in the existing instrument; and
- (e) if an illegitimate person dies or has died on or after the 11th June 1928 and —
 - (i) after his death his parents marry or have married; and
 - (ii) he would, if living at the time of the marriage, have become a legitimated person,

this paragraph shall apply with respect to the taking of interests by, or in succession to, his spouse or civil partner, children and remoter issue as if he had been legitimated by virtue of the marriage.¹⁰

6 and 7. [Repealed]¹¹

SCHEDULE 3

CONSEQUENTIAL AMENDMENTS

Section 12(2)

[Sch 3 amended by Administration of Estates Act 1990 Sch 5 and by Matrimonial Proceedings Act 2003 Sch 6, and amends the following Acts —

Trustee Act 1961 q.v.

Civil Registration Act 1984 q.v.]

SCHEDULE 4¹²

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement

Table of Renumbered Provisions

Original	Current

Table of Endnote References

¹ Subs (6) amended by Civil Partnership Act 2011 Sch 14 and by Interpretation Act 1976 s 16A.

² S 7 repealed by Administration of Estates Act 1990 Sch 5.

³ Subs (2) repealed by Administration of Estates Act 1990 Sch 5.

⁴ Subpara (ii) repealed by Administration of Estates Act 1990 Sch 5.

⁵ Subs (4) substituted by Matrimonial Proceedings Act 2003 Sch 5.

⁶ S 10A inserted by Family Law Act 1991 s 19.

⁷ Subs (3) repealed by Statute Law Revision Act 1992 Sch 2.

⁸ Item (a) amended by Civil Partnership Act 2011 Sch 14.

⁹ Item (b) amended by Civil Partnership Act 2011 Sch 14.

¹⁰ Item (e) amended by Civil Partnership Act 2011 Sch 14.

¹¹ Paras 6 and 7 repealed by Administration of Estates Act 1990 Sch 5.

¹² Sch 4 repealed by Statute Law Revision Act 1992 Sch 2.