

## LEGITIMACY ACT

### Principal Act

|                               |                                |                        |
|-------------------------------|--------------------------------|------------------------|
| <b>Act. No. 1927-05</b>       | <i>Commencement<br/>Assent</i> | 1.1.1928<br>16.11.1927 |
| With which is<br>consolidated | Relevant current<br>provisions | Commencement<br>date   |
| Act. 1972-06,<br>ss.12 and 13 | ss.14 and 15                   |                        |
| Amending<br>enactments        | Relevant current<br>provisions | Commencement<br>date   |
| Act. 1932-10                  | Sch.                           |                        |
| 1934-11                       | ss. 2, 6(1), 10                |                        |
| 1935-08                       | s. 8                           |                        |
| 1960-35                       | ss. 4, 5                       |                        |
| 1962-09                       | —                              |                        |
| 1972-06                       | s. 6(1), (2)                   |                        |
| 1975-31                       | s. 3(3)                        |                        |
| 1983-48                       | Sch.                           |                        |
| 2005-42                       | s. 10, Sch.                    | 2.8.2005               |

### English sources

Legitimacy Act 1926 (16 & 17 Geo.5 c.60)  
 Matrimonial Causes Act 1950 (14 Geo.6 c.25)  
 Legitimacy Act 1959 (7 & 8 Eliz.2 c.73)  
 Family Law Reform Act 1969 (1969 c.46)

**ARRANGEMENT OF SECTION**

## Section

*Preliminary*

1. Short title.
2. Interpretation.

*Legitimation*

3. Legitimation by subsequent marriage of parents.
4. Legitimacy of children of certain void marriages.
5. Declarations of legitimacy.

*Property Rights of Legitimated Persons*

6. Rights of legitimated persons, etc., to take interests in property.
7. Succession on intestacy of legitimated persons and their issue.
8. Application to illegitimate persons dying before marriage of parents.
9. Personal rights and obligations of legitimated persons.
10. *Repealed.*
11. Provisions as to persons legitimated by extraneous law.
12. *Repealed.*
13. *Repealed.*

*Property Rights of Illegitimate Persons*

14. Right of illegitimate child to succeed on intestacy of parents, and of parents to succeed on intestacy of illegitimate child.
15. Presumption that in dispositions of property references to children, etc., include references to illegitimate children, etc.

**SCHEDULE.**

Registration of births of legitimated persons.

AN ACT TO AMEND THE LAW RELATING TO CHILDREN BORN OUT OF WEDLOCK.

**Short title.**

1. This Act may be cited as the Legitimacy Act.

**PART I.**

**Interpretation.**

2. In this Act, unless the context otherwise requires—

“date of legitimation” means the date of the marriage leading to the legitimation, or where the marriage occurred before the commencement of this Act, the commencement of this Act;

“disposition” means an assurance of any interest in property by any instrument whether inter vivos or by will;

“entailed interest” means an interest in tail, or in tail male, or in tail female or in tail special in real property;

“intestate” includes a person who leaves a will but dies intestate as to some beneficial interest in his real or personal estate;

“legitimated person” means a person legitimated by this Act;

“Registrar” means the Registrar of Births and Deaths.

**Legitimation by subsequent marriage of parents.**

3.(1) Subject to the provisions of this section, where the parents of an illegitimate person marry or have married one another, whether before or after the commencement of this Act, the marriage shall, if the father of the illegitimate person was or is at the date of the marriage domiciled in Gibraltar, render that person, if living, legitimate from the commencement of this Act, or from the date of the marriage, whichever last happens.

(2) The legitimation of a person under this Act does not enable him or his spouse, children or remoter issue to take any interest in real or personal property save as is hereinafter in this Act expressly provided.

(3) The provisions contained in the Schedule shall have effect with respect to the re-registration of the births of legitimated persons, whether or not the legitimation or the recognition thereof was effected by this Act.

**Legitimacy of children of certain void marriages.**

4.(1) Subject to the provisions of this section, the child of a void marriage, whether born before or after the 1st day of January, 1961, shall be treated as the legitimate child of his parents if at the time of the act of intercourse resulting in the birth, or at the time of the celebrating of the marriage if later, both or either of the parties reasonably believed that the marriage was valid.

(2) This section applies, and applies only, where the father of the child was domiciled in Gibraltar at the time of the birth or, if he died before the birth, was so domiciled immediately before his death.

(3) This section does not affect any rights under the intestacy of a person who died before the 1st day of January, 1961, and does not affect the operation or construction of any disposition coming into operation before such date.

(4) In this section “void marriage” means a marriage, not being voidable only, in respect of which the Supreme Court has or had jurisdiction to grant a decree of nullity, or would have or would have had such jurisdiction if the parties were domiciled in Gibraltar.

#### **Declaration of legitimacy, etc.**

5.(1) Any person who is a British national, or whose right to be deemed a British national depends wholly or in part on his legitimacy or on the validity of any marriage, may, if he is domiciled in Gibraltar, or claims any real or personal estate situate in Gibraltar, apply by petition to the Supreme Court for a decree declaring that the petitioner is the legitimate child of his parents or that the marriage of his father and mother or his grandfather and grandmother was a valid marriage or that his own marriage was a valid marriage.

(2) Any person claiming that he or his parent or his remoter ancestor became or has become a legitimate person may apply by petition to the Supreme Court for a decree declaring that he or his parent or remoter ancestor, as the case may be, became or has become a legitimate person.

(3) On any application under this section the Supreme Court may make such decree as it thinks just, and the decree shall be binding on all persons :

Provided that the decree of the Supreme Court shall not prejudice any person—

- (a) if it is subsequently proved to have been obtained by fraud or collusion; or

- (b) unless that person has been cited or made a party to the proceedings or claims through a person so cited or made a party.

(4) A copy of every petition under this section and of any affidavit accompanying the petition shall be delivered to the Attorney General at least one month before the petition is presented, and the Attorney General shall be a respondent on the hearing of the petition and on any subsequent proceedings relating thereto.

(5) In any application under this section such persons shall, subject to rules of court, be cited in the proceedings or otherwise summoned as the Supreme Court shall think fit, and any such persons may be permitted to become parties to the proceedings and to oppose the application.

(6) No proceedings under this section shall affect any final judgment or decree already announced or made by any court of competent jurisdiction.

## **Rights of legitimated persons, etc., to take interests in property.**

6.(1) Subject to the provisions of this Act, a legitimated person and his spouse, children or more remote issue shall be entitled to take any interest—

- (a) in the estate of an intestate dying after the date of legitimation;
- (b) under any disposition coming into operation after the date of legitimation;
- (c) by descent under an entailed interest created after the date of legitimation,

in like manner as if the legitimated person had been born legitimate:

Provided that paragraph (b) shall not apply to a disposition made after the 1st day of January 1928 except as respects any interest in relation to which the disposition refers only to persons who are, or whose relationship is deduced through, legitimate persons.

(2) Where the right to any property, real or personal, depends on the relative seniority of the children of any person, and those children include one or more legitimated persons, the legitimated person or persons shall rank as if he or they had been born on the day when he or they became legitimated by virtue of this Act, and if more than one such legitimated person became legitimated at the same time, they shall rank between themselves in order of seniority :

Provided that this subsection shall not apply in relation to any right conferred by a disposition made after the 1st day of January 1928 unless the terms of the disposition are such that the children whose relative seniority is in question cannot include any illegitimate children who are not either legitimated persons within the meaning of this Act or persons recognized by virtue of this Act as having been legitimated.

(3) This section applies only if and so far as a contrary intention is not expressed in the disposition, and shall have effect subject to the terms of the disposition and to the provisions therein contained.

**Succession on intestacy of legitimated persons and their issue.**

7. Where a legitimated person or a child or remoter issue of a legitimated person dies intestate in respect of all or any of his real or personal property, the same persons shall be entitled to take the same interests therein as they would have been entitled to take if the legitimated person had been born legitimate.

**Application to illegitimate persons dying before marriage of parents.**

8. Where an illegitimate person dies after the commencement of this Act and before the marriage of his parents leaving any spouse, children or remoter issue living at the date of such marriage, then if that person would, if living at the time of the marriage of his parents have become a legitimated person, the provisions of this Act with respect to the taking of interests in property by, or in succession to, the spouse, children and remoter issue of a legitimated person, including those relating to the rate of death duties, shall apply as if such person had been a legitimated person and the date of the marriage of his parents had been the date of legitimation.

**Personal rights and obligations of legitimated persons.**

9. 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.

10. *Repealed.*

**Provisions as to persons legitimated by extraneous law.**

11.(1) Where the parents of an illegitimate person marry or have married one another, whether before or after the commencement of this Act, and the

father of the illegitimate person was or is at the time of the marriage, domiciled elsewhere than in Gibraltar 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 Gibraltar be recognized as having been so legitimated from the commencement of this Act or from the date of the marriage, whichever last happens, notwithstanding that his father was not at the time of the birth of such person domiciled in a country in which legitimation by subsequent marriage was permitted by law.

(2) All the provisions of this Act relating to legitimated persons and to the taking of interests in property by or in succession to a legitimated person and the spouse, children and remoter issue of a legitimated person, including those relating to the rate of death duties, shall apply in the case of a person recognized as having been legitimated under this section, or who would, had he survived the marriage of his parents, have been so recognized; and, accordingly this Act shall have effect as if references therein to a legitimated person included a person so recognized as having been legitimated.

(3) For the purposes of this section, “country” includes Great Britain and Northern Ireland and any other part of the Commonwealth as well as a foreign country.

12. *Repealed.*

13. *Repealed.*

#### *Property Rights of Illegitimate Persons*

#### **Right of illegitimate child to succeed on intestacy of parents, and of parents to succeed on intestacy of illegitimate child.**

14.(1) Where either parent of an illegitimate child dies intestate as respects all or any of his or her real or personal property, the illegitimate child or, if he is dead, his issue, shall be entitled to take any interest therein to which he or such issue would have been entitled if he had been born legitimate.

(2) Where an illegitimate child dies intestate in respect of all or any of his real or personal property, each of his parents, if surviving, shall be entitled to take any interest therein to which that parent would have been entitled if the child had been born legitimate:

Provided that nothing in this section affects any rights under the intestacy of a person who died before the 1st day of September 1972.

(3) This section does not apply to or affect the right of any person to take any entailed interest in real or personal property.

(4) In this section, “illegitimate child” does not include an illegitimate child who is—

- (a) a legitimated person within the meaning of this Act or a person recognized by virtue of this Act or at common law as having been legitimated; or
- (b) an adopted person under an adoption order made in Gibraltar or in any part of the United Kingdom, the Isle of Man or the Channel Islands or under an overseas adoption as defined in section 4(3) of the Adoption Act 1968.

**Presumption that in dispositions of property references to children and other relatives include references to, and to persons related through, illegitimate children.**

15.(1). In any disposition made after the 1st day of January, 1928—

- (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) Subsection(1) applies only where the reference in question is to a person who is to benefit or to be capable of benefiting under the disposition or, for the purpose of designating such a person, to someone else to or through whom that person is related; but that subsection does not affect the construction of the word “heir” or “heirs” or of any expression which is used to create an entailed interest in real or personal property.

(3) In this section references to an illegitimate child include references to an illegitimate child who is or becomes a legitimate person within the meaning of this ordinance or a person recognized by virtue of this Act or at common law as having been legitimated.

(4) Where under any disposition any real or personal property or any interest in such property is limited (whether subject to any preceding limitation or charge or not) in such a way that it would, apart from this section, devolve (as nearly as the law permits) along 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 respect as if this section had not been enacted.

(5) There is hereby abolished, as respects dispositions made after the 1st day of September 1972 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.

(6) In this section “deposition” means a disposition, including an oral disposition, of real or personal property whether inter vivos or by will or codicil; and, notwithstanding any rule of law, a disposition made by will or codicil executed before the date on which this section comes into force shall not be treated for the purposes of this section as made on or after that date by reason only that the will or codicil is confirmed by a codicil executed on or after that date.

**SCHEDULE.**

## Section 3(3)

**REGISTRATION OF BIRTHS OF LEGITIMATED PERSONS.**

1. The Registrar may, on production of such evidence as appears to him to be satisfactory, obtain authority from the Head of the Civil Status and Registration Office which authority may be given at any time for the re-registration of the birth of a legitimated person whose birth is already registered under the Births and Deaths Registration Act, and such re-registration shall be effected in such manner and at such place as the Head of the Civil Status and Registration Office may by rules prescribe:

Provided that the Registrar shall not re-register the birth of any such person in any case where information with a view to obtaining such re-registration is not furnished to him by both parents, unless—

- (a) the name of a person acknowledging himself to be the father of the legitimated person has been entered in the register in pursuance of section 15 of the Births and Deaths Registration Act; or
- (b) the paternity of the legitimated person has been established by an affiliation order or otherwise by a decree of a court of competent jurisdiction.

2. It shall be the duty of the parents of a legitimated person, or, in cases where re-registration can be effected on information furnished by one parent and one of the parents is dead, of the surviving parent, within the time hereinafter specified, to furnish to the Registrar information with a view to obtaining the re-registration of the birth of that person; that is to say –

- (a) if the marriage took place before the commencement of this Act, within six months of such commencement;
- (b) if the marriage takes place after the commencement of this Act, within three months after the date of the marriage.

3. Where the parents, or either of them, fail to furnish the necessary information within the time limited for the purpose, the Registrar may at any time after the expiration of that time require the parents of a person whom he believes to have been legitimated by virtue of this Act, or either of them, to give him such information concerning the matter as he may consider necessary verified in such manner as he may direct, and for that purpose to attend personally at the Registrar's office within such time, not

being less than seven days after the receipt of the notice, as may be specified in the notice.

4. The failure of the parents or either of them to furnish information as required by this Schedule in respect of any legitimated person shall not affect the legitimation of that person.

5. No fee for re-registration under this Schedule shall be charged if the necessary information for the purpose is furnished within the time above specified ; but in any other case there shall be charged in respect of such re-registration such fees as may be prescribed by rules under this Schedule.

6. This Schedule shall be construed as one with the Births and Deaths Registration Act.