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## STATUTORY INSTRUMENTS

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# 1987 No. 2203

## The Adoption (Northern Ireland) Order 1987

### PART V

#### STATUS OF ADOPTED CHILDREN

##### Meaning of “adoption” in Part V

**39.**—(1) In this Part “adoption” means adoption—

- (a) by an adoption order;
- (b) by an order made under the Adoption Act (Northern Ireland) 1967<sup>F1</sup>, the Adoption of Children Act (Northern Ireland) 1950<sup>F2</sup> or the Adoption of Children Act (Northern Ireland) 1929<sup>F3</sup>;
- (c) by an order made in England and Wales, Scotland, the Isle of Man or in any of the Channel Islands;<sup>F4</sup> . . .

[<sup>F4</sup>(cc) which is a Convention adoption; or]

- (d) which is an adoption recognised by the law of Northern Ireland and effected under the law of any other country,

and cognate expressions shall be construed accordingly.

(2) The definition of adoption includes, where the context admits, an adoption effected before the commencement of this Part, and the date of an adoption effected by an order is the date of the making of the order.

**F1** 1967 c. 35 (NI)

**F2** 1950 c. 6 (NI)

**F3** 1929 c. 15 (NI)

**F4** 2001 c. 11 (NI)

##### Status conferred by adoption

**40.**—(1) An adopted child shall be treated in law—

- (a) where the adopters are a married couple, as if he had been born as a child of the marriage (whether or not he was in fact born after the marriage was solemnized);

[<sup>F5</sup>(aa) where the adopters are two people who are civil partners of each other, as if the child had been born as a child of the civil partnership (whether or not the child was in fact born after the formation of the civil partnership);]

- (b) in any other case, as if he had been born to the [<sup>F6</sup>adopters or] adopter in wedlock (but not as a child of any actual marriage of the [<sup>F6</sup>adopters or] adopter).

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(2) An adopted child shall, subject to<sup>[F7]</sup> paragraphs (3) and (3A)], be treated in law as if he were not the child of any person other than the adopters or adopter.

(3) Paragraph (2)—

(a) does not apply for the purposes of the Table in Article 18(1) of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984<sup>F8</sup><sup>[F9]</sup> or for the purposes of Schedule 12 to the Civil Partnership Act 2004] (prohibited degrees of relationship); and

(b) in the case of a child adopted by one of its natural parents as sole adoptive parent, has no effect as respects entitlement to property depending on relationship to that parent, or as respects anything else depending on that relationship.

<sup>[F7]</sup>(3A) Where, in the case of a Convention adoption, the High Court is satisfied, on an application under this paragraph—

(a) that under the law of the country in which the adoption was effected the adoption is not a full adoption;

(b) that the consents referred to in Article 4(c) and (d) of the Convention have not been given for a full adoption, or that the United Kingdom is not the receiving State (within the meaning of Article 2 of the Convention); and

(c) that it would be more favourable to the adopted child for a direction to be given under this paragraph,

the High Court may direct that paragraph (2) shall not apply, or shall not apply to such extent as may be specified in the direction.

(3B) In paragraph (3A) “full adoption” means an adoption by virtue of which the adopted child falls to be treated in law as if he were not the child of any person other than the adopters or adopter.

(3C) The following provisions of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 (NI 4)—

(a) Article 35 (provisions relating to the Attorney-General); and

(b) Article 36 (supplementary provisions as to declarations),

shall apply in relation to, and to an application for, a direction under paragraph (3A) as they apply in relation to, and to an application for, a declaration under Part V of that Order.]

(4) It is hereby declared that this Article prevents an adopted child from being illegitimate.

(5) This Article has effect—

(a) in the case of an adoption before the commencement of this Part from that time, and

(b) in the case of any other adoption, from the date of the adoption.

<sup>[F10]</sup>(5A) But paragraph (1)(aa) applies only as from 13th January 2020, even in the case of an adoption before that date.]

(6) Subject to the provisions of this Part, this Article—

(a) applies for the construction of statutory provisions or instruments passed or made before the adoption or later, and so applies subject to any contrary indication; and

(b) has effect as respects things done, or events occurring, after the adoption, or after the commencement of this Part, whichever is the later.

<sup>[F11]</sup>(7) For the purposes of the application of paragraph (6) in a case within paragraph (1)(aa), the reference in paragraph (6)(b) to the commencement of this Part is to be read as a reference to 12th January 2020.]

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- F5** Art. 40(1)(aa) inserted (13.1.2020) by [The Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019 \(S.I. 2019/1514\)](#), regs. 1(2), **30(8)(a)** (with regs. 6-9)
- F6** Words in art. 40(1)(b) inserted (13.1.2020) by [The Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019 \(S.I. 2019/1514\)](#), regs. 1(2), **30(8)(b)** (with regs. 6-9)
- F7** 2001 c. 11 (NI)
- F8** 1984 NI 14
- F9** 2004 c.33
- F10** Art. 40(5A) inserted (13.1.2020) by [The Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019 \(S.I. 2019/1514\)](#), regs. 1(2), **30(8)(c)** (with regs. 6-9)
- F11** Art. 40(7) inserted (13.1.2020) by [The Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019 \(S.I. 2019/1514\)](#), regs. 1(2), **30(8)(d)** (with regs. 6-9)

**Modifications etc. (not altering text)**

- C1** Art. 40(1)(a) applied (with modifications) (6.4.2010) by [Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), reg. 3, **Sch. 2**
- C2** Art. 40(2)(3)(4) applied (with modifications) (6.4.2010) by [Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), reg. 3, **Sch. 2**
- C3** Art. 40(6) applied (with modifications) (6.4.2010) by [Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), reg. 3, **Sch. 2**

**Adoptive relatives**

**41** .—<sup>[F12]</sup>(1) A relationship existing by virtue of Article 40 may be referred to as an adoptive relationship, and

- (a) a male adopter may be referred to as the adoptive father;
- (b) a female adopter may be referred to as the adoptive mother;
- (c) any other relative of any degree under an adoptive relationship may be referred to as an adoptive relative of that degree,

but this Article does not prevent the term “parent”, or any other term not qualified by the word “adoptive”, being treated as including an adoptive relative.

<sup>[F13]</sup>(2) A reference (however expressed) to the adoptive mother and father of a child adopted by—

- (a) a couple of the same sex, or
- (b) a partner of the child’s parent, where the couple are of the same sex,

is to be read as a reference to the child’s adoptive parents.]

- F12** Art. 41(1): art. 41 renumbered as art. 41(1) (13.1.2020) by [The Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019 \(S.I. 2019/1514\)](#), regs. 1(2), **30(9)(a)** (with regs. 6-9)
- F13** Art. 41(2) inserted (13.1.2020) by [The Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019 \(S.I. 2019/1514\)](#), regs. 1(2), **30(9)(b)** (with regs. 6-9)

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## Rules of construction for instruments concerning property

**42.**—(1) Subject to any contrary indication, the rules of construction contained in this Article apply to any instrument, other than an existing instrument, so far as it contains a disposition of property.

(2) In applying Article 40(1) to a disposition which depends on the date of birth of a child or children of the adoptive parent or parents, the disposition shall be construed as if—

- (a) the adopted child had been born on the date of adoption,
- (b) two or more children adopted 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.

(3) Examples of phrases in wills on which paragraph (2) 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. Paragraph (2) will not affect the reference to the age of 21 years in example 2.

(4) Article 40(2) does not prejudice any interest vested in possession in the adopted child before the adoption, or any interest expectant (whether immediately or not) upon an interest so vested.

(5) Where it is necessary to determine for the purposes of a disposition of property effected by an instrument whether a woman can have a child, it shall be presumed that once a woman has attained the age of 55 years she will not adopt a child after execution of the instrument, and, notwithstanding Article 40, if she does so that child shall not be treated as her child or <sup>F14</sup>(if she does so as one of a couple) as the child of the other one of the couple] for the purposes of the instrument.

(6) In this Article, “instrument” includes a private Act or Measure settling property, but not any other statutory provision.

**F14** Words in art. 42(5) substituted (13.1.2020) by [The Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019 \(S.I. 2019/1514\)](#), regs. 1(2), **30(10)** (with regs. 6-9, 30(11))

### Modifications etc. (not altering text)

**C4** Art. 42 applied (with modifications) (6.4.2010) by [Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), reg. 3, **Sch. 2**

## Dispositions depending on date of birth

**43.**—(1) Where a disposition depends on the date of birth of a child who was born illegitimate and who is adopted by one of the natural parents as sole adoptive parent, Article 42(2) does not affect entitlement under Part II of the Family Law Reform (Northern Ireland) Order 1977<sup>F15</sup>[<sup>F16</sup> or Article 22 of the Wills and Administration Proceedings (Northern Ireland) Order 1994] (illegitimate children).

(2) Paragraph (1) applies for example where—

- (a) a testator dies in 1986 bequeathing a legacy to his eldest grandchild living at a specified time,
- (b) his daughter has an illegitimate child in 1987 who is the first grandchild,

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(c) his married son has a child in 1988,  
(d) subsequently the illegitimate child is adopted by the mother as sole adoptive parent,  
and in all those cases the daughter's child remains the eldest grandchild of the testator throughout.

**F15** [1977 NI 17](#)

**F16** [1994 NI 13](#)

### Property devolving with peerages, etc.

**44.**—(1) An adoption does not affect the descent of any peerage or dignity or title of honour.  
(2) An adoption shall not affect the devolution of any property limited (expressly or not) to devolve (as nearly as the law permits) along with any peerage or dignity or title of honour.  
(3) Paragraph (2) applies only if and so far as a contrary intention is not expressed in the instrument, and shall have effect subject to the terms of the instrument.

#### Modifications etc. (not altering text)

**C5** [Art. 44](#) applied (with modifications) (6.4.2010) by [Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), reg. 3, [Sch. 2](#)

### Protection of trustees and personal representatives

**45.**—(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, whether any adoption has been effected or revoked if that fact could affect entitlement to the property.  
(2) A trustee or personal representative shall not be liable to any person by reason of a conveyance or distribution of the property made without regard to any such fact if he has not received notice of the fact before the conveyance or distribution.  
(3) This Article 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.

#### Modifications etc. (not altering text)

**C6** [Art. 45](#) applied (with modifications) (6.4.2010) by [Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), reg. 3, [Sch. 2](#)

### Meaning of “disposition”

**46.**—(1) In this Part, unless the context otherwise requires,—  
“disposition” includes the conferring of a power of appointment and any other disposition of an interest in or right over property;  
“power of appointment” includes any discretionary power to transfer a beneficial interest in property without the furnishing of valuable consideration.  
(2) This Part applies to an oral disposition as if contained in an instrument made when the disposition was made.  
(3) For the purposes of this Part, the death of the testator is the date at which a will or codicil is to be regarded as made.

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(4) For the purposes of this Part, 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.

(5) It is hereby declared that references in this Part to dispositions of property include references to a disposition by the creation of an entailed interest.

**Modifications etc. (not altering text)**

**C7** Art. 46 applied (with modifications) (6.4.2010) by [Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), reg. 3, **Sch. 2**

**Miscellaneous**

**47.**—(1) Article 40 does not apply for the purposes of [<sup>F17</sup>Articles 68 and 69 of the Sexual Offences (Northern Ireland) Order 2008 (sex with an adult relative); but nothing in this paragraph is to be read as preventing the application of Article 40 for the purposes of Article 68(3)(a) or (b) or 69(3)(a) or (b) of that Order] (incest).

(2) Article 40 does not apply for any purpose relating to nationality or immigration.  
*Para. (3) rep. 1988 NI 2*

(4) The revocation of an adoption order under Article 55 does not affect any right to property under an instrument executed before the date of revocation.

**F17** Words in art. 47(1) substituted (2.2.2009) by [Sexual Offences \(Northern Ireland\) Order 2008 \(S.I. 2008/1769 \(N.I. 2\)\)](#), arts. 1(3), 81, **Sch. 1 para. 19**; S.R. 2008/510, **art. 2**

**Modifications etc. (not altering text)**

**C8** Art. 47(1)(2) applied (with modifications) (6.4.2010) by [Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), reg. 3, **Sch. 2**

**Pensions**

**48.** Article 40(2) does not affect entitlement to a pension which is payable to or for the benefit of a child and is in payment at the time of his adoption.

**Insurance**

**49.** Where a child is adopted whose natural parent has effected an insurance with a friendly society or a collecting society or an industrial insurance company for the payment on the death of the child of money for funeral expenses, the rights and liabilities under the policy shall by virtue of the adoption be transferred to the adoptive parents who shall for the purposes of the enactments relating to such societies and companies be treated as the person who took out the policy.

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**Changes and effects yet to be applied to the whole Order associated Parts and Chapters:**

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- s. 6(2) words inserted by [S.I. 2019/1514 reg. 29\(4\)](#)
- art. 60(1A) inserted by [2022 c. 18 \(N.I.\) Sch. 4 para. 6\(a\)](#)