



Law Reform (Parent and Child) (Scotland) Act 1986

1986 CHAPTER 9

1 Legal equality of children

- (1) The fact that a person's parents are not or have not been married to one another shall be left out of account in establishing the legal relationship between the person and any other person; and accordingly any such relationship shall have effect as if the parents were or had been married to one another.
- (2) Subject to subsection (4) below, any reference (however expressed) in any enactment or deed to any relative shall, unless the contrary intention appears in the enactment or deed, be construed in accordance with subsection (1) above.
- (3) Subsection (1) above is subject to the following provisions of this Act—
 - (a) subsection (4) below ;
 - (b) section 2(1)(b); and
 - (c) section 9(1).
- (4) Nothing in this section shall apply to the construction or effect of—
 - (a) any enactment passed or made before the commencement of this Act unless the enactment is amended by Schedule 1 to this Act and, as so amended, otherwise provides;
 - (b) any deed executed before such commencement;
 - (c) any reference (however expressed) in any deed executed after such commencement to a legitimate or illegitimate person or relationship.

2 Parental rights and their exercise

- (1) Subject to sections 3 and 4 of this Act—
 - (a) a child's mother shall have parental rights whether or not she is or has been married to the child's father ;

- (b) a child's father shall have parental rights only if he is married to the child's mother or was married to her at the time of the child's conception or subsequently.
- (2) For the purposes of subsection (1)(b) above, the father shall be regarded as having been married to the mother at any time when he was a party to a purported marriage with her which was—
 - (a) voidable, or
 - (b) void, but believed by him in good faith at that time to be valid, whether that belief was due to an error of fact or an error of law.
 - (3) Nothing in this section shall affect any enactment or rule of law by virtue of which a parent may be granted or deprived of parental rights.
 - (4) Where two or more persons have any parental right, each of them may exercise that right without the consent of the other person or, as the case may be, any of the other persons unless any decree or deed conferring the right otherwise provides.

3 Orders as to parental rights

- (1) Any person claiming interest may make an application to the court for an order relating to parental rights and file court may make such order relating to parental rights as it thinks fit.
- (2) In any proceedings relating to parental rights the court shall regard the welfare of the child involved as the paramount consideration and shall not make any order relating to parental rights unless it is satisfied that to do so will be in the interests of the child.
- (3) Any person appointed by a court to be a tutor to a child shall, unless the court otherwise orders, become curator to the child when the child attains the age of minority.

4 Power of parent to appoint tutor or curator

- (1) The parent of a child may appoint any person to be tutor or curator of the child after his death, but any such appointment shall be of no effect unless—
 - (a) the appointment is in writing and signed by the parent; and
 - (b) the parent at the time of his death was tutor or curator of the child or would have been such tutor if he had survived until after the birth of the child.
- (2) Any person appointed under subsection (1) above to be tutor to a child shall, unless the appointment otherwise specifically provides, become curator to the child when the child attains the age of minority.
- (3) Nothing in this section shall affect any power to appoint, or any appointment of, a tutor for the purposes of the administration of any property given or bequeathed to a child.

5 Presumptions

- (1) A man shall be presumed to be the father of a child—
 - (a) if he was married to the mother of the child at any time in the period beginning with the conception and ending with the birth of the child ;
 - (b) where paragraph (a) above does not apply, if both he and the mother Of the child have acknowledged that he is the father and he has been registered

as such in any register kept under section 13 (register of births and stillbirths) or section 44 (register of corrections, etc.) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 Or in any corresponding register kept under statutory authority in any part of the United Kingdom other than Scotland.

- (2) Subsection (1)(a) above shall apply in the case of a void, voidable or irregular marriage as it applies in the case of a valid and regular marriage.
- (3) Without prejudice to the effect under any rule of law which a decree of declarator in an action to which section 7 of this Act applies may have in relation to the parties, a decree of declarator in such an action shall give rise to a presumption to the same effect as the decree; and any such presumption shall displace any contrary presumption howsoever arising.
- (4) Any presumption under this section may be rebutted by proof on a balance of probabilities.

6 Determination of parentage by blood sample

- (1) This section applies where, for the purpose of obtaining evidence relating to the determination of parentage in civil proceedings, a blood sample is sought by a party to the proceedings or by a curator ad litem.
- (2) Where a blood sample is sought from a pupil child, consent to the taking of the sample may be given by his tutor or any person having custody or care and control of him.
- (3) Where a blood sample is sought from any person who is incapable of giving consent, the court may consent to the taking of the sample where—
 - (a) there is no person who is entitled to give such consent, or
 - (b) there is such a person, but it is not reasonably practicable to obtain his consent in the circumstances, or he is unwilling to accept the responsibility of giving or withholding consent.
- (4) The court shall not consent under subsection (3) above to the taking of a blood sample from any person unless the court is satisfied that the taking of the sample would not be detrimental to the person's health.

7 Actions for declarator

- (1) An action for declarator of parentage, non-parentage, legitimacy, legitimation or illegitimacy may be brought in the Court of Session or the sheriff court.
- (2) Such an action may be brought in the Court of Session if and only if the child was born in Scotland or the alleged or presumed parent or the child—
 - (a) is domiciled in Scotland on the date when the action is brought;
 - (b) was habitually resident in Scotland for not less than one year immediately preceding that date; or
 - (c) died before that date and either—
 - (i) was at the date of death domiciled in Scotland ; or
 - (ii) had been habitually resident in Scotland for not less than one year immediately preceding the date of death.
- (3) Such an action may be brought in the sheriff court if and only if—

Status: This is the original version (as it was originally enacted).

- (a) the child was born in the sheriffdom, or
 - (b) an action could have been brought in the Court of Session under subsection (2) above and the alleged or presumed parent or the child was habitually resident in the sheriffdom on the date when the action is brought or on the date of his death.
- (4) In an action to which this section applies, the court shall not grant decree of declarator unless it is satisfied that the grounds of action have been established by sufficient evidence.
- (5) Nothing in any rule of law or enactment shall prevent the court making in any proceedings an incidental finding as to parentage, non-parentage, legitimacy, legitimation or illegitimacy for the purposes of those proceedings.
- (6) In this section " the alleged or presumed parent" includes a person who claims or is alleged to be or not to be the parent.

8 Interpretation

In this Act, unless the context otherwise requires, the following expressions shall have the following meanings respectively assigned to them—

" action for declarator " includes an application for declarator contained in other proceedings ;

" child", except where used to express a relationship, means—

- (a) in relation to custody or access, a child under the age of 16 years;
- (b) in relation to tutory, a pupil;
- (c) in relation to curatory, a minor ;
- (d) in relation to parental rights other than custody, access, tutory or curatory, a child under the age of 18 years ;

" the court " means the Court of Session or the sheriff;

" curator " does not include curator ad litem;

" deed " means any disposition, contract, instrument or writing whether inter vivos Or mortis causa ;

" non-parentage " means that a person is not or was not the parent, or is not Or was not the child, of another person;

" parent " includes natural parent;

" parentage " means that a person is or was the parent, or is or was the child, of another person ;

" parental rights " means tutory, curatory, custody or access, as the case may require, and any right or authority relating to the welfare or upbringing of a child conferred on a parent by any rule of law ;

" tutor " does not include tutor ad litem.

9 Savings and supplementary provisions

- (1) Nothing in this Act shall—
- (a) affect any rule of law whereby a child born out of wedlock takes the domicile of his mother as a domicile of origin or dependence ;
 - (b) except to the extent that Schedules 1 and 2 to this Act otherwise provide, affect the law relating to adoption of children;

- (c) apply to any title, coat of arms, honour or dignity transmissible on the death of the holder thereof or affect the succession thereto or the devolution thereof;
 - (d) affect the right of legitim out of, or the right of succession to, the estate of any person who died before the commencement of this Act.
- (2) The court may at any time vary or recall any order made under section 3 of this Act or consent given by it under section 6 of this Act.

10 Transitional provisions, amendments and repeals

- (1) The enactments specified in Schedule 1 to this Act shall have effect subject to the amendments set out in that Schedule.
- (2) The enactments specified in Schedule 2 to this Act are hereby repealed to the extent set out in the third column of that Schedule.

11 Citation, commencement and extent

- (1) This Act may be cited as the Law Reform (Parent and Child) (Scotland) Act 1986.
- (2) This Act shall come into operation on such day as the Secretary of State may appoint by order made by statutory instrument.
- (3) An order under subsection (2) above may contain such transitional provisions and savings as appear to the Secretary of State necessary or expedient in connection with the coming into operation of this Act.
- (4) This Act shall extend to Scotland only.