ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER S62

STATUS OF CHILDREN AND PARENTAGE TESTING ACT

Showing the Law as at 31 December 2022

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition revises and consolidates—
Act 7/2019, in force 15 February 2019
U.K. S.I. 2019 No. 852, in force 14 May, 2019

Published by the
Attorney General's Chambers
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STATUS OF CHILDREN AND PARENTAGE TESTING ACT

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STATUS OF CHILDREN AND PARENTAGE TESTING ACT

PART 1

PRELIMINARY PROVISIONS

Interpretation

1. In this Act—

"Anguillian" means a person who is regarded as an Anguillian under section 80(2) of the Constitution of Anguilla;

(U.K. S.I. 2019 No. 852, s. 13(c))

"cohabiting" means a person who is living or has lived with a person as a husband or wife although not legally married to that person;

"Commissioner" means the Commissioner of Social Development;

"Court" means the Magistrate's Court or the High Court;

"custodian" means a person granted custody of a child under law;

"custody" means the physical or legal control and responsibility for a child, whether joint or individual, including providing for the normal daily requirements relating to the care and development of a child;

"guardianship" means the legal responsibility and authority for making decisions with respect to a child;

"parentage testing procedure" includes—

(a) the taking of tissue, fluid or another bodily sample from a person and the scientific examination of such sample; and

(b) any test carried out on a person involving the application of medical science;

for the purpose of obtaining evidence with respect to parentage;

"parent" means the biological or adoptive parent or someone else who is presumed under this Act to be the parent, but a child cannot have more than 2 parents at any one time.

Application

2. This Act applies to a person, whether or not—

(a) the person is Anguillian; or

(b) the person's father or mother has ever been domiciled in Anguilla.

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Equal status of children

3. (1) The legal distinction in the status of children born within or outside of marriage is abolished and all children shall from 15 February 2019 be of equal status.

(2) All references made to the word "child" shall, from 15 February 2019, be interpreted to include a child whose father and mother were not married to each other when the child was conceived and have not later married each other.

PART 2

ESTABLISHING PARENTAGE

Division 1

Presumptions of paternity

Presumptions of paternity

4. (1) There is a presumption that a person is the father of a child where the person—

(a) has acknowledged in the process of the registration of the child, in accordance with the law relating to the registration of births, that he is the father of the child;

(b) has been adjudged or recognised in his lifetime or after his death by a court to be the father of the child;

(c) has signed and filed in the Registry an instrument acknowledging that he is the father and that instrument was executed as a deed in the presence of an attorney, a Justice of the Peace, a registered medical practitioner, a minister of religion, a marriage officer, a notary public or a midwife;

(d) marries the mother of the child after the birth of the child and acknowledges by word or conduct that he is the father of the child;

(e) was married to the mother of the child at the birth of the child;

(f) was married to the mother of the child and that marriage was terminated by—

(i) death,

(ii) judgement of nullity, or

(iii) divorce, where the *decree nisi* was granted within 10 months before the birth of the child;

(g) was a cohabitant with the mother of the child at the time of the birth of the child, or the child was born within 10 months after they ceased to be cohabitants;

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(h) who is alleged to be the father of the child has given written consent to that child adopting his name in accordance with the law relating to change of name; or

(i) who is alleged to be the father of the child has by his conduct implicitly and consistently acknowledged that he is the father of the child.

(2) Where circumstances exist that give rise to the presumptions of paternity in respect of more than one father, no presumption shall be made as to paternity.

Presumptions where child is born as a result of artificial conception procedures

5. (1) Artificial conception procedures include—

(a) artificial insemination;

(b) the procedure of transferring into the uterus of a woman an embryo derived from an ovum fertilised outside her body; or

(c) any other way (whether medically assisted or not) by which a woman can become pregnant other than by having sexual intercourse with a man.

(2) Where a child is born to a woman as a result of the carrying out of an artificial conception procedure while the woman was married to a man or while the woman cohabited with a man and whether or not the child is biologically a child of the woman and of the man, the child is their child for the purposes of this Act.

(3) Where a child is born to a woman as a result of the carrying out of an artificial conception procedure, whether or not the child is biologically a child of the woman, the child is her child for the purposes of this Act.

(4) Where a woman undergoes an artificial conception procedure with the consent of her husband or cohabiting partner at the time of the procedure, the husband or cohabiting partner is presumed to be the father of any child born as a result of the pregnancy.

(5) If the ovum used in the artificial conception procedure was produced by another woman, that other woman is conclusively presumed not to be the mother of any child born as a result of the pregnancy.

(6) If semen used in the artificial conception procedure was produced by a man other than the woman's husband or cohabiting partner at the time of the procedure, the man who produced the semen is conclusively presumed not to be the father of any child born as a result of the pregnancy.

(7) Where a woman carries a child as a result of any surrogacy arrangement, that woman is conclusively presumed not to be the mother of that child, whether or not the child is biologically a child of the woman, and under such circumstances the intended mother or father shall be the parent of that child.

Presumptions generally

6. (1) The standard of proof for presumptions in this part is proof on a balance of probabilities and all presumptions except those made under section 5(5), (6) and (7) may be rebutted by proof on a balance of probabilities.

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(2) A conclusive presumption is not rebuttable.

(3) Where 2 or more presumptions about the parentage of a child arise in proceedings and the presumptions conflict with each other, the Court shall decide which presumption prevails having regard first to the best interest of the child and then to the interest of justice.

(4) A child shall not have more than 2 parents, one mother and one father, at any one time.

(5) For the purposes of section 5, a person is to be presumed to have consented to an artificial conception procedure being carried out unless it is proved, on the balance of probabilities, that the person did not consent.

Instruments filed in registry of the Court

7. (1) An instrument referred to in section 4 shall be filed in the Registry.

(2) The Registrar shall cause records of all instruments and copies filed under subsection (1) to be made and kept in the Registry and shall, on request made by any person who the Registrar is satisfied has a proper interest in the matter, cause a search of any record to be made and shall permit that person to inspect any instrument or copy.

(3) Where the Court makes a declaration under section 9 the Registrar shall—

(a) cause a copy of the declaration to be filed in the Registry; and

(b) on receipt of the declaration, amend the birth certificate of the specified child by inserting the name of the natural father with words to the effect that parentage has been established by a declaration of the Court.

Division 2

Parentage declaration

Application for parentage declaration

8. An application for a parentage declaration may be made to the Court by—

(a) a parent of a child who claims that another specified person is also a parent of the child;

(b) a person who claims that he or she is a parent of a particular child;

(c) a person who claims that a specified person is his or her parent;

(d) a person who demonstrates that he or she has a relevant interest in the matter where a decision is sought about whether a specified person is a parent of a particular child; or

(e) the Commissioner or a custodian or guardian of a child.

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Parentage declaration

9. (1) On an application under section 8, the Court may declare that a specified person is a parent of a specified child.

(2) A parentage declaration may be made about a child whether or not the child is born or the parent or child is alive.

(3) A declaration made under this section shall be conclusive evidence of the matters contained in the declaration.

Refusal to hear application

10. The Court may refuse to hear an application under section 8 or 11 where the Court considers it may exercise discretion amongst all factors, including where the Court considers it would not be in the best interests of the child to hear the application.

Application for annulment of parentage declaration

11. (1) An application for an order annulling a parentage declaration may only be made in the High Court.

(2) An application for an order annulling a parentage declaration may be made to the Court by—

(a) a person who applied for the declaration;

(b) a person named in the declaration; or

(c) a person who would, before the declaration was made, have been entitled to apply for a parentage declaration in relation to a person named in the declaration.

Annulment of parentage declaration

12. (1) The Court may, by order, annul a parentage declaration where—

(a) the Court considers that facts exist, or circumstances have arisen, that—

(i) were not disclosed to the Court before the declaration was made,

(ii) could not, by the exercise of reasonable diligence, have been disclosed to the Court by the applicant when the application for the declaration was heard, and

(iii) are material to the question whether the relationship stated in the declaration exists; and

(b) after considering the facts or circumstances referred to in paragraph (a), the Court is not satisfied that the relationship is established.

(2) However, subsection (1)(a)(ii) does not apply where the applicant for the order is—

(a) a person who was a child when the declaration was made; or

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(b) the Commissioner.

(3) Where the Court makes an order annulling a declaration the declaration ceases to have effect.

(4) Where the Court makes an order annulling a declaration, it may make any ancillary orders, including orders varying property rights, that it considers just and equitable to place everyone affected by the annulment, as far as practicable, in the position that he or she would have been in if the declaration had not been made, but the Court shall not hold persons liable for any things done while relying on the validity of the declaration.

Division 3

Parentage testing

Parentage testing procedure

13. (1) In any proceedings in which the parentage of a child is required to be determined, the Court may issue a direction requiring a parentage testing procedure to be carried out—

(a) on the request of a party to the proceedings;

(b) on the request of a person representing the child;

(c) of its own initiative; or

(d) where the child is not a party, on the application of the child.

(2) The Court shall, before issuing a direction under subsection (1), ensure that it is in the best interest of the child to do so.

(3) A direction under subsection (1) may be issued in relation to—

(a) a person believed by the Court to be a parent of the child;

(b) the child; or

(c) any other person that may assist in determining the parentage of the child.

(4) Where the Court issues a direction under subsection (1), the Court may—

(a) issue such directions as it considers necessary or desirable—

(i) to enable the parentage testing procedure to be carried out, or

(ii) to make the parentage testing procedure more effective and reliable;

including but not limited to, directions requiring a person to submit to a medical procedure, to provide a bodily sample or to furnish information relevant to the medical or family history of a person; and

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(b) issue such directions as it considers necessary in relation to costs incurred with respect to—

(i) the carrying out of the parentage testing procedure or other directions issued by the Court in relation to the parentage testing procedure, or

(ii) the preparation of reports in relation to the information obtained as a result of the carrying out of the parentage testing procedure.

(5) The Court may at any time revoke or vary a direction previously given by it under this section.

Effects of failure to comply with parentage testing order

14. (1) Where, without reasonable excuse, a parentage testing direction is not complied with the Court may draw the inferences from the failure to comply that it considers appropriate.

(2) In particular, the Court may treat the failure—

(a) as evidence corroborating the evidence of a party to the proceeding; or

(b) where the stated person is a party to the proceeding and is relying on a rebuttable presumption, as evidence rebutting the presumption.

(3) Without limiting subsection (1) or (2), where a parentage testing direction is not complied with, the Court may—

(a) dismiss the proceeding; or

(b) allow the proceeding to continue on the conditions it considers appropriate.

Parentage testing in relation to a child, etc.

15. (1) If a direction under section 13 is to a child who is under 18 years, a medical procedure or other act shall not be carried out unless a guardian, custodian or other person who has parental responsibility for the child consents to the medical procedure or act being carried out, but the Court may draw such inferences from a failure or refusal to consent as the Court considers fit.

(2) If a direction under section 13 is to a person who is suffering from a mental disorder and is incapable of understanding the nature and purposes of the parentage testing procedure or other act, that procedure or other act shall not be carried out unless—

(a) the person who has the care and control of that person consents; and

(b) the medical practitioner in whose care the person is, has certified that the parentage testing procedure will not be prejudicial to the person's proper care and treatment.

(3) A person who properly carries out, or assists in the proper carrying out of, the medical procedure or other act referred to in section 13 is not liable in any civil or criminal action in relation to the medical procedure or other act unless negligence is proved.

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Matters to be taken into account by Court in making determination

16. (1) Before making a determination under section 13, the Court may, if it is of the view that to do so would be in the best interest of the child, appoint a guardian *ad litem* for the child.

(2) In deciding whether to issue a direction under section 13 the Court shall—

(a) consider and determine all objections made by a party to the proceedings on account of medical, religious or other grounds; and

(b) if it determines that an objection is valid, take the objection into account in arriving at its decision.

Reports of medical procedure

17. (1) The person responsible for carrying out a parentage testing procedure for the purpose of giving effect to a direction under section 13 shall provide the Court with a report, in the prescribed form, in which the person shall state—

(a) the results of the tests;

(b) whether the person to whom the report relates is or is not excluded by the results from being the parent of the child; and

(c) where that person is not so excluded, the value, if any, of the results in determining whether that person is the parent of the child.

(2) Where a report has been made to the Court under subsection (1), any party to the proceedings may, with leave of the Court, or shall, if the Court so directs, obtain from the person who made the report a written statement explaining or amplifying any statement made in the report, and that statement shall form part of the report made to the Court.

(3) A report made under subsection (1) may be received in evidence in any proceedings under this Act.

(4) Where a report referred to under subsection (1) is received in evidence in proceedings under this Act, the Court may—

(a) on the request of a party to the proceedings;

(b) on the request of a person representing the child; or

(c) of its own motion;

make an order requiring the person who made the report, or any person whose evidence may be relevant in relation to the report, to appear before the Court and give evidence in relation to the report.

Approved laboratory and nominated reporter

18. (1) The Minister shall determine the laboratories that shall be used to carry out parentage testing under this Act and may nominate a reporter for each laboratory.

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(2) The Minister shall publish the name of each laboratory and each nominated reporter in the *Gazette*.

PART 3

DISPOSITION OF PROPERTY

Transitional provisions relating to instruments

19. (1) The following dispositions are to be construed as if this Act had not come into operation—

(a) dispositions made *inter vivos* before 15 February 2019; and

(b) dispositions made by a will or codicil executed by a person who died before 15 February 2019.

(2) Where a disposition referred to in subsection (1) contains a special power of appointment, this Act shall not-—

(a) cause the exercise of the power to be construed so as to include any person who is not a member of that class; or

(b) extend the class of persons in whose favour the appointment may be made.

(3) The estate of a person who dies intestate as to the whole or any part of his estate before 15 February 2019 shall be distributed in accordance with the enactments and rules of law which would have applied to the estate if this Act had not come into operation.

Persons dealing with property

20. For the purposes of the administration or distribution of any estate or property, an executor, administrator or a trustee shall, whenever it is material in the circumstances, make honest and reasonable inquiries as to the existence of any person who could claim an interest in the estate or property by reason of this Act, but he shall not be obliged to pursue such inquiries further than he honestly and reasonably believes to be necessary.

Protection of executors, administrators and trustees

21. An action shall not lie against an executor, an administrator, or the trustee under any instrument in relation to any estate or property, by any person who could claim an interest in the estate or the property by reason of this Act, to enforce any claim arising by reason of the executor, administrator or trustee having—

(a) made any distribution of the estate or of the property held on trust; or

(b) otherwise acted in the administration of the estate or property held on trust;

so as to disregard the claims where, at the time of making the distribution or otherwise so acting, the executor, administrator or trustee had no notice of the relationship on which the claim is based.

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PART 4

MISCELLANEOUS

Hearings

22. (1) Unless the Court otherwise orders, the hearing of an application made under this Act shall be in closed Court.

(2) A person shall not publish, whether by newspaper, or by radio or television or by electronic means, or on social media or otherwise, the name of or any particulars relating to the identity of any person by or in relation to whom proceedings are taken under this Act, without the authority of the Court before which the proceedings are taken.

(3) A person who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine of $3,000 or to 3 months imprisonment or to both.

Existing rights

23. This Act does not affect rights which became vested before 15 February 2019.

Regulations

24. (1) The Minister may make Regulations for giving effect to any of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations—

(a) giving directions for parentage testing procedures under section 13(1);

(b) prescribing matters required or permitted to be prescribed by this Act;

(c) providing for all Rules required to be made under the Act;

(d) providing for the service of all notices, forms or other documents;

(e) providing for the preparation of reports in relation to the information obtained as a result of the carrying out of medical procedures or other acts under directions issued under section 13;

(f) providing for all forms;

(g) providing for matters as may be—

(i) contemplated by or necessary for giving full effect to this Act and for its administration, or

(ii) incidental to or consequential upon any provision of this Act; and

(h) providing for fees and penalties.

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(3) A magistrate or a judge may make minor adjustments to all court forms to meet the justice of the case.

Citation

25. This Act may be cited as the Status of Children and Parentage Testing Act, Revised Statutes of Anguilla, Chapter S62.

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