



Age of Legal Capacity (Scotland) Act 1991

1991 CHAPTER 50

1 Age of legal capacity.

- (1) As from the commencement of this Act—
 - (a) a person under the age of 16 years shall, subject to section 2 below, have no legal capacity to enter into any transaction;
 - (b) a person of or over the age of 16 years shall have legal capacity to enter into any transaction.
- (2) Subject to section 8 below, any reference in any enactment to a pupil (other than in the context of education or training) or to a person under legal disability or incapacity by reason of nonage shall, insofar as it relates to any time after the commencement of this Act, be construed as a reference to a person under the age of 16 years.
- (3) Nothing in this Act shall—
 - (a) apply to any transaction entered into before the commencement of this Act;
 - (b) confer any legal capacity on any person who is under legal disability or incapacity other than by reason of nonage;
 - (c) affect the delictual or criminal responsibility of any person;
 - (d) affect any enactment which lays down an age limit expressed in years for any particular purpose;
 - (e) prevent any person under the age of 16 years from receiving or holding any right, title or interest;
 - (f) affect any existing rule of law or practice whereby—
 - (i) any civil proceedings may be brought or defended, or any step in civil proceedings may be taken, in the name of a person under the age of 16 years [^{F1}in relation to whom there is no person entitled to act as his legal representative (within the meaning of Part I of the Children (Scotland) Act 1995), or where there is such a person] is unable (whether by reason of conflict of interest or otherwise) or refuses to bring or defend such proceedings or take such step;

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- (ii) the court may, in any civil proceedings, appoint a curator ad litem to a person under the age of 16 years;
 - (iii) the court may, in relation to the approval of an arrangement under section 1 of the ^{M1}Trusts (Scotland) Act 1961, appoint a curator ad litem to a person of or over the age of 16 years but under the age of 18 years;
 - (iv) the court may appoint a curator bonis to any person;
 - (g) prevent any person under the age of 16 years from [^{F2}exercising parental responsibilities and parental rights (within the meaning of sections 1(3) and 2(4) respectively of the Children (Scotland) Act 1995) in relation to any child of his.]
- (4) Any existing rule of law relating to the legal capacity of minors and pupils which is inconsistent with the provisions of this Act shall cease to have effect.
- (5) Any existing rule of law relating to reduction of a transaction on the ground of minority and lesion shall cease to have effect.

Textual Amendments

- F1** Words in s. 1(3)(f)(i) substituted (1.11.1996) by 1995 c. 36, s. 105(4), **Sch. 4 para. 53(2)(a)** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**
- F2** Words in s. 1(3)(g) substituted for s. 1(3)(g)(i)(ii) (1.11.1996) by 1995 c. 36, s. 105(4), **Sch. 4 para. 53(2)(b)** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**

Marginal Citations

- M1** 1961 c. 57.

2 Exceptions to general rule.

- (1) A person under the age of 16 years shall have legal capacity to enter into a transaction—
- (a) of a kind commonly entered into by persons of his age and circumstances, and
 - (b) on terms which are not unreasonable.
- (2) A person of or over the age of 12 years shall have testamentary capacity, including legal capacity to exercise by testamentary writing any power of appointment.
- (3) A person of or over the age of 12 years shall have legal capacity to consent to the making of an adoption order in relation to him^{F3}...
- (4) A person under the age of 16 years shall have legal capacity to consent on his own behalf to any surgical, medical or dental procedure or treatment where, in the opinion of a qualified medical practitioner attending him, he is capable of understanding the nature and possible consequences of the procedure or treatment.
- [^{F4}(4ZA) For the purposes of subsection (4), the storage of gametes in accordance with the Human Fertilisation and Embryology Act 1990 is to be treated as a medical procedure.
- (4ZB) A person under the age of 16 years shall have legal capacity to consent to the use of the person's human cells in accordance with Schedule 3 to the Human Fertilisation and Embryology Act 1990 for the purposes of a project of research where the person

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is capable of understanding the nature of the research; and in this subsection “ human cells ” has the same meaning as in that Schedule.]

^{F5}[(4A) A person under the age of sixteen years shall have legal capacity to instruct a solicitor, in connection with any civil matter, where that person has a general understanding of what it means to do so; and without prejudice to the generality of this subsection a person twelve years of age or more shall be presumed to be of sufficient age and maturity to have such understanding.

(4B) A person who by virtue of subsection (4A) above has legal capacity to instruct a solicitor shall also have legal capacity to sue, or to defend, in any civil proceedings.

(4C) Subsections (4A) and (4B) above are without prejudice to any question of legal capacity arising in connection with any criminal matter.]

(5) Any transaction—

- (a) which a person under the age of 16 years purports to enter into after the commencement of this Act, and
- (b) in relation to which that person does not have legal capacity by virtue of this section,

shall be void.

Textual Amendments

- F3** Words in s. 2(3) repealed (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), s. 121(2), [Sch. 3](#); S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)
- F4** S. 2(4ZA)-(4ZB) inserted (1.10.2009) by [Human Fertilisation and Embryology Act 2008 \(c. 22\)](#), s. 68(2), [Sch. 7 para. 16](#); S.I. 2009/2232, art. 2(y)
- F5** S. 2(4A)-(4C) inserted (1.11.1995) by 1995 c. 36, s. 105(4), [Sch. 4 para. 53\(3\)](#) (with s. 103(1)); S.I. 1995/2787, art. 3, [Sch.](#)

3 Setting aside of transactions.

(1) A person under the age of 21 years (“the applicant”) may make application to the court to set aside a transaction which he entered into while he was of or over the age of 16 years but under the age of 18 years and which is a prejudicial transaction.

(2) In this section “prejudicial transaction” means a transaction which—

- (a) an adult, exercising reasonable prudence, would not have entered into in the circumstances of the applicant at the time of entering into the transaction, and
- (b) has caused or is likely to cause substantial prejudice to the applicant.

(3) Subsection (1) above shall not apply to—

- (a) the exercise of testamentary capacity;
- (b) the exercise by testamentary writing of any power of appointment;
- (c) the giving of consent to the making of an adoption order;
- (d) the bringing or defending of, or the taking of any step in, civil proceedings;
- (e) the giving of consent to any surgical, medical or dental procedure or treatment;
- (f) a transaction in the course of the applicant’s trade, business or profession;
- (g) a transaction into which any other party was induced to enter by virtue of any fraudulent misrepresentation by the applicant as to age or other material fact;

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- (h) a transaction ratified by the applicant after he attained the age of 18 years and in the knowledge that it could be the subject of an application to the court under this section to set it aside; or
 - (j) a transaction ratified by the court under section 4 below.
- (4) Where an application to set aside a transaction can be made or could have been made under this section by the person referred to in subsection (1) above, such application may instead be made by that person's executor, trustee in bankruptcy, trustee acting under a trust deed for creditors or curator bonis at any time prior to the date on which that person attains or would have attained the age of 21 years.
- (5) An application under this section to set aside a transaction may be made—
- (a) by an action in the Court of Session or the sheriff court, or
 - (b) by an incidental application in other proceedings in such court,
- and the court may make an order setting aside the transaction and such further order, if any, as seems appropriate to the court in order to give effect to the rights of the parties.

4 Ratification by court of proposed transaction.

- (1) Where a person of or over the age of 16 years but under the age of 18 years proposes to enter into a transaction which, if completed, could be the subject of an application to the court under section 3 above to set aside, all parties to the proposed transaction may make a joint application to have it ratified by the court.
- (2) The court shall not grant an application under this section if it appears to the court that an adult, exercising reasonable prudence and in the circumstances of the person referred to in subsection (1) above, would not enter into the transaction.
- (3) An application under this section shall be made by means of a summary application—
- (a) to the sheriff of the sheriffdom in which any of the parties to the proposed transaction resides, or
 - (b) where none of the said parties resides in Scotland, to the sheriff at Edinburgh, and the decision of the sheriff on such application shall be final.

5 Guardians of persons under 16.

- (1) Except insofar as otherwise provided in Schedule 1 to this Act, as from the commencement of this Act any reference in any rule of law, enactment or document to the tutor^{F6} . . . of a pupil child shall be construed as a reference to [^{F7}a person entitled to act as a child's legal representative (within the meaning of Part I of the Children (Scotland) Act 1995), and any reference to the tutory of such a child shall be construed as a reference to the entitlement to act as a child's legal representative enjoyed by a person by, under or by virtue of the said Part I.]
- (2) Subject to section 1(3)(f) above, as from the commencement of this Act no guardian of a person under the age of 16 years shall be appointed as such except under [^{F8}section 7 of the Children (Scotland) Act 1995.]
- (3) As from the commencement of this Act, no person shall, by reason of age alone, be subject to the curatory of another person.
- (4) As from the commencement of this Act, no person shall be appointed as factor loco tutoris.

Changes to legislation: There are currently no known outstanding effects for the Age of Legal Capacity (Scotland) Act 1991. (See end of Document for details)

Textual Amendments

- F6** Words in s. 5(1) repealed (1.11.1996) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 53(4)(a), Sch. 5 (with s. 103(1)); S.I. 1996/2203, art. 3(3), Sch. Table
- F7** Words in s. 5(1) substituted (1.11.1996) by 1995 c. 36, s. 105(4), Sch. 4 para. 53(4)(b) (with s. 103(1)); S.I. 1996/2203, art. 3(3), Sch.
- F8** Words in s. 5(2) substituted (1.11.1996) by 1995 c. 36, s. 105(4), Sch. 4 para. 53(5) (with s. 103(1)); S.I. 1996/2203, art. 3(3), Sch.

6 Attainment of age.

- (1) The time at which a person attains a particular age expressed in years shall be taken to be the beginning of the relevant anniversary of the date of his birth.
- (2) Where a person has been born on 29th February in a leap year, the relevant anniversary in any year other than a leap year shall be taken to be 1st March.
- (3) The provisions of this section shall apply only to a relevant anniversary which occurs after the commencement of this Act.

F97 Acquisition of domicile.

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Textual Amendments

- F9** S. 7 repealed (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), s. 46(2), Sch. 3; S.S.I. 2006/212, art. 2

8 Transitional provision.

Where any person referred to in section 6(4)(b), 17(3), 18(3) or 18A(2) of the ^{M2}Prescription and Limitation (Scotland) Act 1973 as having been under legal disability by reason of nonage was of or over the age of 16 years but under the age of 18 years immediately before the commencement of this Act, any period prior to such commencement shall not be reckoned as, or as part of, the period of 5 years, or (as the case may be) 3 years, specified respectively in section 6, 17, 18 or 18A of that Act.

Marginal Citations

- M2** 1973 c. 52.

9 Interpretation.

In this Act, unless the context otherwise requires—

“existing” means existing immediately before the commencement of this Act;

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“transaction” means a transaction having legal effect, and includes—

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- (a) any unilateral transaction;
- (b) the exercise of testamentary capacity;
- (c) the exercise of any power of appointment;
- (d) the giving by a person of any consent having legal effect;
- (e) the bringing or defending of, or the taking of any step in, civil proceedings;
- (f) acting as arbiter or trustee;
- (g) acting as an instrumentary witness.

Textual Amendments

F10 Definition in s. 9 repealed (1.11.1996) by 1995 c. 36, s. 105(5), **Sch. 5** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.** Table

10 Amendments and repeals.

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

11 Short title, commencement and extent.

- (1) This Act may be cited as the Age of Legal Capacity (Scotland) Act 1991.
- (2) This Act shall come into force at the end of the period of two months beginning with the date on which it is passed.
- (3) This Act shall extend to Scotland only.

Changes to legislation:

There are currently no known outstanding effects for the Age of Legal Capacity (Scotland) Act 1991.