



# Age of Legal Capacity (Scotland) Act 1991

## 1991 CHAPTER 50

An Act to make provision in the law of Scotland as to the legal capacity of persons under the age of 18 years to enter into transactions, as to the setting aside and ratification by the court of transactions entered into by such persons and as to guardians of persons under the age of 16 years; to make provision in the law of Scotland relating to the time and date at which a person shall be taken to attain a particular age; and for connected purposes. [25th July 1991]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### **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;

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- (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 who has no guardian or whose guardian is unable (whether by reason of conflict of interest or otherwise) or refuses to bring or defend such proceedings or take such step;
    - (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 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—
    - (i) being appointed as guardian to any child of his, or
    - (ii) exercising parental rights 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.

## 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; and accordingly—
- (a) for section 12(8) (adoption orders) of the Adoption (Scotland) Act 1978 there shall be substituted the following subsection—
 

“(8) An adoption order shall not be made in relation to a child of or over the age of 12 years unless with the child’s consent; except that, where the court is satisfied that the child is incapable of giving his consent to the making of the order, it may dispense with that consent.”; and
  - (b) for section 18(8) (freeing child for adoption) of that Act there shall be substituted the following subsection—
 

“(8) An order under this section shall not be made in relation to a child of or over the age of 12 years unless with the child’s consent; except that where the court is satisfied that the child is incapable of giving his consent to the making of the order, it may dispense with that consent.”

- (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.
- (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.

### **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;
  - (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 or tutory of a pupil child shall be construed as a reference to the guardian or, as the case may be, guardianship of a person under the age of 16 years; and accordingly the guardian of such a person shall have in relation to him and his estate the powers and duties which, immediately before such commencement, a tutor had in relation to his pupil.
- (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 section 3 (orders as to parental rights) or section 4 (power of parent to appoint guardian) of the Law Reform (Parent and Child) (Scotland) Act 1986.
- (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.

#### **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.

#### **7 Acquisition of domicile**

The time at which a person first becomes capable of having an independent domicile shall be the date at which he attains the age of 16 years.

## **8 Transitional provision**

Where any person referred to in section 6(4)(b), 17(3), 18(3) or 18A(2) of the 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.

## **9 Interpretation**

In this Act, unless the context otherwise requires—

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

“parental rights” has the same meaning as in section 8 (interpretation) of the Law Reform (Parent and Child) (Scotland) Act 1986;

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

- (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.

## **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.

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## SCHEDULES

### SCHEDULE 1

Section 10.

#### AMENDMENT OF ENACTMENTS

##### *Defence Act 1842 (c. 94)*

- 1 In section 15, for the words “persons within the age of twenty-one years” substitute the words “or, being persons under legal disability by reason of nonage”; and for the words “come and be at the age of twenty-one years” substitute the words “cease to be under legal disability by reason of nonage or come and be”.
- 2 In section 27, for the words “infancy or” substitute the words “persons under legal disability by reason of nonage or of”.

##### *Lands Clauses Consolidation (Scotland) Act 1845 (c. 19)*

- 3 In section 7, for the words “infants, minors,” wherever they occur substitute the words “persons under legal disability by reason of nonage”.
- 4 In section 67, for the words “infant, minor,” substitute the words “persons under legal disability by reason of nonage”.
- 5 In section 69, for the word “infancy” substitute the words “legal disability by reason of nonage”.
- 6 In section 70, for the word “infancy” substitute the words “legal disability by reason of nonage”.

##### *Judicial Factors Act 1849 (c. 51)*

- 7 In section 1, before the definition of the word “tutor” insert the words “the word “guardian” shall mean any person appointed to be the guardian of a person who is under the age of 16 years
- 8 In section 10, after the word “factors” insert the word “guardians”.
- 9 In section 25(2), for the words from “person” where first occurring to “person” where second occurring substitute the words “guardian who shall, by virtue of his office, administer the estate of any person under the age of 16 years shall be subject to the provisions of this Act, but”.
- 10 In section 27, after the word “factors” insert the word “guardians”.
- 11 In sections 31 and 32, before the word “tutor” insert the word “guardian,”.
- 12 In sections 33 and 34, after the word “factor” wherever it occurs insert the word “guardian”.
- 13 In section 36, before the word “tutories” insert the word “guardianships,”.
- 14 In section 37, before the word “tutor” insert the word “guardian,”.

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- 15 In section 40, before the word “tutors” wherever it occurs insert the word “guardians,”.

*Improvement of Land Act 1864 (c. 114)*

- 16 In section 18, for the words “an infant or infants, or a minor or minors” substitute the words “a person under legal disability by reason of nonage”.
- 17 In section 24, for the words “infants, minors” substitute the words “persons under legal disability by reason of nonage”.
- 18 In section 68, for the word “infant” substitute the words “person under legal disability by reason of nonage”.

*Titles to Land Consolidation (Scotland) Act 1868 (c. 101)*

- 19 In section 24, for the words “pupil, minor” wherever they occur substitute the words “person under legal disability by reason of nonage”.
- 20 In section 62, for the words “in nonage” substitute the words “under legal disability by reason of nonage”.
- 21 In section 119, for the words “of full age, or in pupillarity or minority, or although he should be subject to any legal incapacity” substitute the words “subject to any legal incapacity or not”.

*Colonial Stock Act 1877 (c. 59)*

- 22 In section 26 (definitions) after the definition of “colony” there shall be inserted—  
“The expression “infant”, in relation to Scotland, means a person under legal disability by reason of nonage, and the expression “infancy” shall be construed accordingly.”

*Heritable Securities (Scotland) Act 1894 (c. 44)*

- 23 In section 13, for the words “in pupillarity or minority, or subject to any legal incapacity” substitute the words “subject to any legal disability by reason of nonage or otherwise”; and after the word “curators,” insert the word “guardians”.

*Merchant Shipping Act 1894 (c. 60)*

- 24 In section 55(1), for the word “infancy” substitute the words “legal disability by reason of nonage”.

*Trusts (Scotland) Act 1921 (c. 58)*

- 25 In section 2, in the definitions of “trust” and “trust deed”, after the word “curator” insert the word “guardian”, and, in the definition of “trustee”, for the words from “tutor” to “curator” substitute the words “tutor, curator, guardian (including a father or mother acting as guardian of a child under the age of 16 years)”.

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*Conveyancing (Scotland) Act 1924 (c. 27)*

- 26 In section 41(1), for the words from “in pupillarity” to “incapacity” substitute the words “subject to any legal disability by reason of nonage or otherwise”.

*Trusts (Scotland) Act 1961 (c. 57)*

- 27 In section 1, in subsection (1)(a) after the word “who” insert the words “because of any legal disability”, and, in subsection (2), for the words “over the age of pupillarity” substitute the words “of or over the age of 16 years”.

*Registration of Births, Deaths and Marriages (Scotland) Act 1965 (c. 49)*

- 28 In section 20(3)(c), for “18” substitute “16”.
- 29 In section 43(10), for the words “tutor or curator” substitute the word “guardian”.

*National Loans Act 1968 (c. 13)*

- 30 In section 14(5)(a), for the words from “of unsound” to “disability” substitute the words “under legal disability by reason of nonage or otherwise”.

*Social Work (Scotland) Act 1968 (c. 49)*

- 31 In section 16(11)(c), for the words “tutor or curator” substitute the word “guardian”.
- 32 In section 18(4), for the words “tutor or curator of an infant” substitute the words “guardian of a child”.

*Taxes Management Act 1970 (c. 9)*

- 33 In section 73, for the words “parent, guardian or tutor” substitute the words “parent or guardian”.
- 34 In section 118(1), in the appropriate alphabetical position, insert the following definition—

““infant”, in relation to Scotland, except in section 73 of this Act, means a person under legal disability by reason of nonage, and, in the said section 73, means a person under the age of 18 years.”

*Sheriff Courts (Scotland) Act 1971 (c. 58)*

- 35 In section 37(2A), for the words “tutory, curatory” substitute the word “guardianship”.

*Adoption (Scotland) Act 1978 (c. 28)*

- 36 In section 65(1), in paragraph (b) of the definition of “guardian” for the words “tutory, curatory” substitute the word “guardianship”.

*Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c. 59)*

- 37 In section 7(1)(d), for the words “a minor” substitute the words “under legal disability by reason of nonage”.



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*Civil Jurisdiction and Judgments Act 1982 (c. 27)*

- 38 In Schedule 9, in paragraph 3 for the words “tutory and curatory” substitute the words “guardianship of children”.

*Companies Act 1985 (c. 6)*

- 39 In sections 203(1), 327(2)(b) and 328(8), for the words “pupil or minor” substitute the words “person under the age of 18 years”.

*Family Law (Scotland) Act 1985 (c. 37)*

- 40 In section 2(4)(c)(i), for the words “father or mother” substitute the words “parent or guardian”.

*Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9)*

- 41 For section 4 substitute the following section—

**“4 Power of parent to appoint guardian**

The parent of a child may appoint any person to be guardian 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 guardian of the child or would have been such guardian if he had survived until after the birth of the child.”

- 42 In section 6(2), for the words “pupil child” substitute the words “child under the age of 16 years”; and for the word “tutor” substitute the word “guardian”.

- 43 In section 8, in paragraph (a) of the definition of “child” after the words “in relation to” insert the word “guardianship,” and in paragraph (d) for the words from “custody” to “curatory” substitute the words “guardianship, custody or access”; and in the definition of “parental rights” for the words “tutory, curatory” substitute the word “guardianship”.

*Family Law Act 1986 (c. 55)*

- 44 In section 1(1)(b)(ix), for the words “tutory or curatory” substitute the word “guardianship”.

- 45 In section 16, in subsections (1) and (4) for the words “tutory or curatory” substitute the word “guardianship” and for the words “pupil or minor” substitute the word “child”; and in subsection (2) for the words “factor loco tutoris” substitute the words “judicial factor”.

- 46 In section 18(2), for the words “tutory or curatory of a pupil or minor” substitute the words “guardianship of a child”.

- 47 In section 35(4)(b), for the words “tutor or curator” substitute the word “guardian”.

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*Income and Corporation Taxes Act 1988 (c. 1)*

- 48 In section 663(2), for the words “pupil or minor” substitute the words “person under the age of 18 years”.

SCHEDULE 2

Section 10.

REPEALS

| <i>Chapter</i>        | <i>Short title</i>                                    | <i>Extent of repeal</i>  |
|-----------------------|---|--|
| 1474 c. 6.            | The Tutors Act 1474.                                  | The whole Act.   |
| 1672 c. 2.            | The Tutors and Curators Act 1672.                     | The whole Act.   |
| 1681 c. 85.           | The Oaths of Minors Act 1681.                         | The whole Act.   |
| 1696 c. 8.            | The Tutors and Curators Act 1696.                     | The whole Act.   |
| 12 & 13 Vict. c. 51.  | The Judicial Factors Act 1849.                        | In section 1, the words “factor loco tutoris”, “to any pupil” where first occurring and “pupil or” where second occurring. In section 25(1), the words “to any pupil” where first occurring and “pupil or” where second occurring. In section 26, the words “to a pupil” and “pupils or”. Section 30. In section 31, the words “loco tutoris”. |
| 31 & 32 Vict. c. 101. | The Titles to Land Consolidation (Scotland) Act 1868. | In section 3, the words “factors loco tutoris”. In section 119, the words “whether of full age or in pupillarity or minority, or”. In section 121, the words “in pupillarity or minority or”. Section 139.   |
| 43 & 44 Vict. c. 4.   | The Judicial Factors (Scotland) Act 1880.             | In section 3, the words “a factor loco tutoris”.   |
| 52 & 53 Vict. c. 39.  | The Judicial Factors (Scotland) Act 1889.             | Section 11.  |
| 55 & 56 Vict. c. 4.   | The Betting and Loans (Infants) Act 1892.             | The whole Act.   |
| 23 & 24 Geo. 5 c. 41. | The Administration of Justice (Scotland) Act 1933.    | Section 12.  |

| <i>Chapter</i>          | <i>Short title</i>  | <i>Extent of repeal</i>   |
|-------------------------|---|---|
| 12, 13 & 14 Geo.6 c.75. | The Agricultural Holdings (Scotland) Act 1949.                        | In section 84, the words “a pupil or a minor or is”.  |
| 9 & 10 Eliz.2 c. 57.    | The Trusts (Scotland) Act 1961.                                       | In section 1, in subsection (2) the words “(whether acting with the concurrence of a curator, administrator-at-law, or other guardian or not)” and subsection (3).  |
| 1964 c. 41.             | The Succession (Scotland) Act 1964.                                   | Section 28.   |
| 1965 c. 49.             | The Registration of Births, Deaths and Marriages (Scotland) Act 1965. | In section 20(3), paragraph (b). In section 43, in subsections (5), (6) and (7) the words from “and under” to “over eighteen years of age”. In section 56(1), the definitions of “guardian” and “tutor or curator”. |
| 1968 c. 49.             | The Social Work (Scotland) Act 1968.                                  | In section 94(1), in the definition of “guardian” the words “tutor, curator or”.  |
| 1973 c. 29.             | The Guardianship Act 1973.  | In section 13(1), the definition of “guardian”.   |
| 1974 c. 39.             | The Consumer Credit Act 1974.   | In section 189(1), the definition of “minor”.   |
| 1974 c. 53.             | The Rehabilitation of Offenders Act 1974.                             | In section 7(2), the words “including a pupil child”.   |
| 1975 c. 45.             | The Finance (No. 2) Act 1975.   | In section 73(5), the words “pupil or”.   |
| 1975 c. 72.             | The Children Act 1975.  | In section 47(2), the words “tutor, curator” in each place where they occur.  |
| 1978 c. 28.             | The Adoption (Scotland) Act 1978.                                     | In section 12(3)(a)(ii), the words “tutor, curator or other”.   |
| 1979 c. 54.             | The Sale of Goods Act 1979.   | In section 3, in subsection (2) the words “to a minor or” and in subsection (3) the words “minor or other”.   |
| 1982 c. 50.             | The Insurance Companies Act 1982.                                     | In section 7(8), the definition of “minor” in relation to Scotland. In section 31(7), the definition of “minor” in relation to Scotland.  |

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| <i>Chapter</i> | <i>Short title</i>   | <i>Extent of repeal</i>   |
|----------------|--|---|
| 1984 c. 37.    | The Child Abduction Act 1984.  | In section 6(7), the words from “a tutor” to “1986 or”.   |
| 1985 c. 37.    | The Family Law (Scotland) Act 1985.  | In section 2(4), in paragraph (b) the words “or the curator of a minor who is an incapax” and in paragraph (c) head (ii).   |
| 1986 c. 9.     | The Law Reform (Parent and Child) (Scotland) Act 1986.                     | Section 3(3). In section 8, in the definition of “child” paragraphs (b) and (c), and the definitions of “curator” and “tutor”. In Schedule 1, in paragraph 9 in sub-paragraph (2) the words from “and for” to the end, and in sub-paragraph (6) the words from “for the words” where first occurring to “and”; and paragraphs 11, 12, 14(1)(b) and 20(b). |
| 1986 c. 33.    | The Disabled Persons (Services, Consultation and Representation) Act 1986. | In section 16, in paragraph (b) of the definition of “guardian” the words “tutor, curator or”.  |

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