



## Constituency Casework: A guide to age related legislation

Standard Note: SN7032  
Last updated: 12 February 2015  
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Section: Social Policy Section

This note sets out the age restrictions that define a child in a variety of aspects of life including: contracts; debt; housing; benefits; education; employment and medical treatment, with reference to the relevant legislation in each case.

This note refers to England and Wales unless otherwise specified.

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## 1 Definition of a child

The UN Convention on the Rights of the Child, ratified by the UK government in 1991, states that a child:

means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.<sup>1</sup>

The *Children Act 1989*, which makes provision for a number of orders relating to the welfare of children, defines a child as follows:

“child” means,(subject to paragraph 16 of section 1), a person under the age of 18.<sup>2</sup>

## 2 Contracts, debt and council tax

A **contract** is a legally binding agreement between two people or parties which involves a promise to do or give something in return for a monetary amount.

In general you need to be 18 years of age to enter into a contract, although you can make valid contracts for ‘necessaries’ eg food and clothing at any age.<sup>3</sup> Under 18s are generally bound by such a contract if, as a whole, it is for their benefit.<sup>4</sup> Under 18s can also be bound by a contract of employment if it is for their benefit.

Under the age of 18 a person cannot be held responsible for any **debt** that they owe. If an under 18 year old enters into an unenforceable contract and refuses to pay, the court may order them to return the goods or property received.<sup>5</sup>

At 18 an individual has complete contractual capacity; they can make binding contracts in their own right. They can own land, buy a house or flat, hold a tenancy or apply for a mortgage. They will also become entitled to any property that has been held in trust for them.<sup>6</sup>

At 18 a person can act as an executor or administrator of a deceased person’s estate. An 18 year old can ratify an unenforceable contact entered into when they were under 18 years old.<sup>7</sup> An 18 year old can also pawn an item at a pawnshop.<sup>8</sup>

In Scotland, 16 year olds have the legal capacity to enter into contracts. If however a contract is entered into before a person turns 18, the individual can apply to a court to have the transaction set aside, provided the application is made before they turn 21.<sup>9</sup>

For **council tax** purposes a person is classed as an adult from the age of 18.<sup>10</sup>

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<sup>1</sup> Article 1, [Convention on the Rights of the Child](#), 1989.

<sup>2</sup> Section 105, *Children Act 1989*.

<sup>3</sup> *Ryder v Wombell* [1868] LR 4 Ex Ch 32 D 165.

<sup>4</sup> *De Francesco v Barmum* [1819] 43 Ch D165.

<sup>5</sup> Section 3 *Minors’ Contracts Act 1987*.

<sup>6</sup> Section 35 *Finance Act 2005*.

<sup>7</sup> Section 1 *Minors’ Contracts Act 1987*.

<sup>8</sup> Section 114(2) *Consumer Credit Act 1974*.

<sup>9</sup> Section 1-3 *Age of Legal Capacity (Scotland) Act 1991*

<sup>10</sup> [Council Tax - GOV.UK](#)

### 3 Holding an estate in land (includes tenancy agreements)

A minor is prevented from 'holding an estate in land' under section 1(6) of the *Law of Property Act 1925*. If a tenancy is granted to someone under the age of 18 the *Trusts of Land and Appointment of Trustees Act 1996* provides that the conveyance of land (i.e. the tenancy agreement) operates as a deed of trust. Briefly:

- if the deed is in the name of the minor *and* someone of full age, it will operate to create a deed of trust with the latter person being the trustee;
- if the deed is in the sole name of the minor as tenant, then it will operate to make the landlord the trustee.

The question of how a landlord who is also a trustee can end a tenancy was considered in the case of *Alexander-David v Hammersmith & Fulham LBC* [2009] EWCA Civ 259]. Subsequently the case of *Croyden LBC v Tando* [2012] established that when a minor reaches the age of 18 the legal interest does not automatically revert to the tenant – a deed must be executed in order to pass the interest to the tenant. Until this is done the legal interest remains with the trustee.

It is not unusual for a local authority to have a duty to secure housing for a homeless 16 or 17 year old<sup>11</sup> (see section 4 for more details). Where such a duty arises it is possible to offer accommodation on a basis other than a tenancy, e.g. on a licence agreement (section 15 of the *Law of Property Act 1925*).

### 4 Local authority housing obligations

Local authorities have a duty to secure accommodation for all unintentionally homeless 16 and 17 year olds who are eligible for assistance unless they are a 'relevant child' or a 'child in need,' in which case it becomes the responsibility of the Children's Services department of the local authority to find accommodation.<sup>12</sup> Specific guidance on duties owed to homeless 16 and 17 year olds can be found in chapter 12 of the *Homelessness Code of Guidance for Local Authorities* (2006).

In addition, local authorities are required to:

[...]provide accommodation for any child in need within their area who has reached the age of sixteen and whose welfare the authority consider is likely to seriously be prejudiced if they do not provide him with accommodation.<sup>13</sup>

From age 16 children have the right not to be removed from local authority accommodation by their parents or anyone else with parental responsibility.<sup>14</sup>

### 5 Child benefit, child tax credits and other benefits for children and young people

Child Benefit is a benefit for people bringing up children and is payable to people both in and out of work. Child Tax Credit provides means-tested support for working and non-working families with children, and is payable alongside Working Tax Credit. To get Child Benefit or

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<sup>11</sup> Under Part 7 of the *1996 Housing Act* (as amended)

<sup>12</sup> Section 189(1)(e) of the *1996 Housing Act* which was added by *The Homelessness (Priority Need for Accommodation) (England) Order 2002*.

<sup>13</sup> Section 20(3) *Children Act 1989*.

<sup>14</sup> Section 20(11) *Children Act 1989*.

Child Tax Credits, the person must be responsible for a child or qualifying young person. This means children up to the age of 16, and young people aged 16 or over but under 20 in full-time, 'non-advanced' education or 'approved' training.<sup>15</sup>

Guidance on what counts as 'full-time' and 'non-advanced' education, and 'approved training', can be found at the [HMRC website here](#). HMRC also has a [leaflet](#) on who is a 'qualifying young person' for Child Benefit purposes. More detailed guidance is given in [paragraph CBTM07000 onwards of the HMRC \*Child Benefit Technical Manual\*](#).

A 'qualifying young person' for whom CB or Child Tax Credit is paid cannot claim 'adult' benefits in their own right (such as Jobseeker's Allowance).

Where a young person is not a 'qualifying young person', they will not usually be able to claim benefits themselves unless they are 18 or over. There are only very limited circumstances where a 16-17 year old can claim benefits themselves and could include the following:

- orphans;
- care leavers;
- those living away from their parents to avoid physical or sexual abuse,
- those not living at home because they are in special accommodation due to illness or disability or because their parents are in prison; and
- those not living at home because they are estranged from their parents and they are in physical or moral danger or there is a serious risk to their physical or mental health.

Benefits may also be paid on a discretionary basis if they would otherwise suffer severe hardship.

## **6 Medical treatment**

### **6.1 NHS services**

There is no specific age at which children's services in the NHS end although those receiving treatment within children services and requiring continuing treatment generally transition to adult services between the ages of 16 and 18, the exact age will depend on the particular service, local factors and the individual.

From the age of 16 in England a young person has to pay prescription charges unless they are in full time education, pregnant, on a low income or in certain other circumstances.<sup>16</sup>

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<sup>15</sup> In 2004 the then Labour government announced its long term intention to create a single, simplified system of financial support for young people aged 16-19, along the lines of the Youth Allowance introduced in Australia in 1998. Had this been achieved, support would comprise:

- child benefits, up to age 16;
- support for 16-19 year olds; and
- 'adult' benefits.

This would have meant there was no clear cut point at which a "child" became an "adult" for benefits/tax credits purposes. The changes introduced in the *Child Benefit Act 2005* which extended child benefit/tax credits to those in unwaged training and raising the age cut-off to 20 were intended at the time to be interim changes. For further details please see [Child Benefit Bill \(Bill 13 of 2004/05\) - Commons Library Research Paper](#)

<sup>16</sup> Regulation 7 *National Health Service (Charges for Drugs and Appliances) Regulations 2000*.

16 year old females can purchase emergency contraception (the 'morning after' pill) over-the-counter in a chemist.<sup>17</sup>

## 6.2 Consent to medical procedures and treatments

The legal framework governing consent to treatment of children and young people is complex, involving a number of pieces of legislation,<sup>18</sup> case law, common law principles and codes of practice.<sup>19</sup> The procedures that apply will depend on the individual circumstances of the child or young person.

In particular, where a patient has capacity there must be a clear legal basis for a decision to provide treatment against the will of a patient, under either the *Mental Health Act 1983* or *Children Act 1989*.

At any age a person can **give consent** to surgical, medical (including contraceptive) or dental treatment provided the doctor decides they fully understand what is proposed, that is they are considered to be 'Gillick competent'.<sup>20</sup> The parents cannot override the decision to consent, but a court can override the decision if it thinks it is not in the person's best interests.<sup>21</sup>

A person has the right to seek advice and counselling once they have the 'maturity' to understand the request. However their right to complete confidentiality could be restricted if they are at 'risk of significant harm'.<sup>22</sup>

## 7 Being left alone

The law does not specify an age at which a child may be left at home alone. However it is an offence to do so if it places them at risk. If leaving a child alone puts them at risk this can amount to an offence of neglect under the *Children and Young Persons Act 1933* (as amended). Section 1(1) of the act provides:

(1) If any person who has attained the age of sixteen years and [has responsibility for] any child or young person under that age, wilfully assaults, ill-treats, neglects, abandons, or exposes him, or causes or procures him to be assaulted, ill-treated, neglected, abandoned, or exposed, in a manner likely to cause him unnecessary suffering or injury to health (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement), that person shall be guilty of a misdemeanor, and shall be liable— .

(a) on conviction on indictment, to a fine . . . , or alternatively, . . . , or in addition thereto, to imprisonment for any term not exceeding [ten] years; .

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<sup>17</sup> Section.2 *Prescription only Medicines (Human Use) Amendment (No.3) Order 2000*.

<sup>18</sup> The relevant legislation includes the *Children Acts 1989 and 2004*, the *Mental Health Acts 1983 and 2007*, the *Mental Capacity Act 2005*, the *Family Law Reform Act 1969*, and the *Human Rights Act 1998* (all as amended)

<sup>19</sup> This includes the *Code of Practice to the Mental Health Act* and *Code of Practice to the Mental Capacity Act 2005*, and a Department of Health *Reference Guide to Consent for Examination for Treatment*. There is also a *Code of Practice to the Mental Capacity Act 2005*.

<sup>20</sup> This refers to the case of *Gillick v West Norfolk & Wisbeck Area Health Authority* [1986] AC 112 House of Lords which set down guidelines for determining whether a child is competent to make decisions about medical treatment.

<sup>21</sup> *Re W (A Minor) (Medical Treatment: A Court's Jurisdiction)* [1992] 3 WLR 758.

<sup>22</sup> Department of Health Guidance: '*Confidentiality: NHS Code of Practice 2003*.'

(b) on summary conviction, to a fine not exceeding [the prescribed sum] pounds, or alternatively, . . . , or in addition thereto, to imprisonment for any term not exceeding six months.

The [GOV.UK](#) website advises parents to:

Use your judgement on how mature your child is before you decide to leave them alone.<sup>23</sup>

And the [Coram Children's Legal Centre](#) advises:

...maturity and understanding differs from child to child. A child of 12 can have the same maturity and understanding as a child of 14. Like-wise, a child of 13 can have the maturity and understanding of a 9 year old.<sup>24</sup>

But they suggest:

...that most children under the age of 13 should not be left at home alone. Even a short period of time on their own can be distressing and lonely for a child, most children under 13 years of age would not be able to cope with an emergency.

[Coram Children's Legal Centre](#) and [NSPCC](#) guidance to parents/carers considering leaving their child at home is available on their websites.

## 8 Education

A child is of 'compulsory school age' at the start of the term following his or her 5<sup>th</sup> birthday.<sup>25</sup> Parents must ensure their child receives a suitable education at school or elsewhere – for example, at home.<sup>26</sup>

In England a person can leave school on the last Friday of June if they are 16 or will reach the age of 16 during the summer holidays before the beginning of the next school year,<sup>27</sup> but they must stay in some form of education or training until their 18<sup>th</sup> birthday if they were born on or after 1 September 1997. The options are:

- full-time education - eg at a school or college
- an apprenticeship or traineeship
- part-time education or training - as well as being employed, self-employed or volunteering for 20 hours or more a week <sup>28</sup>

In Scotland, Wales and Northern Ireland the school leaving age is similar but there are currently no requirements to stay in education or training until a young person reaches the age of 18.

Young people are entitled to education up until they are 19 years old.<sup>29</sup>

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<sup>23</sup> [The law on leaving your child home alone - GOV.UK](#)

<sup>24</sup> [Children's legal centre - Home Alone](#)

<sup>25</sup> Section 8(2) *Education Act 1996*, as amended, and *Education (Start of Compulsory School Age) Order 1998*. Children whose 5<sup>th</sup> birthday falls on the first day of term (or more correctly, on the 'prescribed day') are of compulsory school age on that day.

<sup>26</sup> Section 7 *Education Act 1996*.

<sup>27</sup> Section 8(3) *Education Act 1996 and Education (School Leaving Date) Orders 1997*.

<sup>28</sup> [School leaving age - GOV.UK](#)

If they are not in work or full-time education at 16 they have the right to an offer of a training place. If they are in work and have not reached a prescribed level in their training, (equivalent to grades A\* to C in five subjects in GCSE examinations) they have right to take time off for study or training until they are 17 years old.<sup>30</sup>

## 9 Employment

From the age of 14 a child can get a part-time job involving 'light work' with the following restrictions: they can only work a maximum of two hours on a school day or Sunday; they cannot work during school hours, before 7am or after 7pm; during school holidays they can work a maximum of five hours a day and 25 hours a week.<sup>31</sup> There may also be local by-laws which impose additional restrictions.

At 16 a young person can work full time if they have left school<sup>32</sup> although they cannot work in bars and betting shops while they are open until they are 18.

## 10 Leaving home

Legally a young adult can leave home without parental consent at age of 18.<sup>33</sup>

However in practice they can probably leave home at 16 without parental consent. Any child arrangements order relating to residence comes to an end at the age of 16 and can only be extended in exceptional circumstances. Wardship proceedings could be brought by their parents for their return home, but a court is unlikely to force them home against their wishes.<sup>34</sup>

If there were serious concerns for a young person's welfare any person could apply for an emergency protection order or the police could place them in police protection.<sup>35</sup> The local authority could apply for a care order if they are under 17.<sup>36</sup> But it would be unlikely that they would be forced to return home in these situations.

In Scotland a young person can leave home without parental consent at 16, although similar emergency protection orders can be applied for until the individual turns 18.<sup>37</sup>

## 11 Leaving care

If a child has been 'looked after' by the local authority they will be appointed a personal advisor, provided with a needs assessment and a pathway plan for leaving care. This will usually terminate at 21 unless they are in further education or training.<sup>38</sup>

If a child was 'looked after' by the local authority between the ages of 16 and 18, the local authority continues to be under a duty to advise and befriend the child. For those children

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<sup>29</sup> Section 41 *Apprenticeships, Skills Children and Learning Act 2009*, as amended The requirement extends to people older than 19 for whom an Education, Health and Care (EHC) plan is maintained.

<sup>30</sup> Section 63A *Employment Rights Act 1996 and Right to Time Off for study or Training Regulations 2001*.

<sup>31</sup> Section 18 *Children and Young Persons Act 1933*.

<sup>32</sup> Section 558 *Education Act 1996*.

<sup>33</sup> Section 1(3) *Children Act 1989*.

<sup>34</sup> Section 1(3)(a) *Children Act 1989*.

<sup>35</sup> Sections 44 and 46 *Children Act 1989*.

<sup>36</sup> Sections 31 *Children Act 1989*.

<sup>37</sup> Sections 57-62 *Children (Scotland) Act 1995*

<sup>38</sup> Section 23C *Children Act 1989*, inserted by Section 3 *Children (Leaving Care) Act 2000*.

that go on to higher education, the local authority has a duty to assist them financially up until the age of 24 if necessary.<sup>39</sup>

There is a similar responsibility for Scottish local authorities to “advise, guide and assist” children between 16 and 18, whilst this must also be provided to children between 19 and 21 if they request it. The responsibility to provide financial assistance for education and training ends when the individual turns 21.<sup>40</sup>

## **12 Adoption**

A child can be adopted up to until the age of 18.<sup>41</sup> A 21 year old can adopt a child.<sup>42</sup>

## **13 Marriage**

Although it is possible to get married or enter into a civil partnership from the age of 16 parental consent is required.<sup>43</sup> If parental consent is refused a court can authorise the marriage.

An 18 year old, or a 16 year old in Scotland, can get married or enter into a civil partnership without parental consent.

## **14 Joining the Armed Services and being able to fight**

From the age of 15 years and 9 months it is possible to apply to the Royal Navy, Royal Marines and the Royal Air Force but it is not possible to serve until the age of 16.

At 16 parental consent is required to join Royal Navy, Royal Marines and the Royal Air Force.<sup>44</sup>

A 17 year old can join the Royal Marines Reserve and the Territorial Army with parental consent.

It is possible to join the Royal Navy or Royal Marines as an officer with parental consent at 17 years, the Royal Air Force at 17 years and six months and the Army at 17 years and nine months.

An 18 year old can join the armed forces and all volunteer reserves without parental consent.<sup>45</sup>

## **15 Driving**

A 16 year old can hold a licence to drive an invalid carriage or a moped. A 16 year old with a disability may be able to hold a licence to drive a car.<sup>46</sup>

A 17 year old can obtain a licence to drive a car, small goods vehicle and an agricultural tractor on the road but not a medium or heavy goods vehicle. To drive a medium-sized

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<sup>39</sup> Section 24 *Children Act 1989*, inserted by Section 4 *Children (Leaving Care) Act 2000*.

<sup>40</sup> Sections 29 and 30 *Children (Scotland) Act 1995*

<sup>41</sup> Sections 56-64 *Adoption and Children Act 2002*.

<sup>42</sup> Sections 50-51 *Adoption and Children Act 2002*.

<sup>43</sup> Section 3(1) *Marriage Act 1949* and Section 4 *Civil Partnership Act 2004*.

<sup>44</sup> Regulation 9 *Army Terms of Service Regulations 2007*.

<sup>45</sup> Section 328 *Armed Forces Act 2006*.

<sup>46</sup> Section 101 *Road Traffic Act 1988*.

goods a person need to be 18 years old and for a heavy goods or large passenger vehicle they need to be 21. A 17 year old can also fill up their car with petrol.<sup>47</sup>

A 21 year old can supervise a learner driver if they have held, and still hold, a full licence for that type of motor car for at least three years.<sup>48</sup>

## 16 Buying alcohol

For under 18 year olds, it is illegal:

- for someone to sell them alcohol
- to buy or try to buy alcohol
- to drink alcohol in a public place
- for an adult to buy alcohol on their behalf.

A person can enter a bar at any age in the company of someone over the age of 18. From the age of 16 they can enter a bar on their own but only to buy non-alcoholic drinks, however if they are accompanied by a person over the age of 18 they may drink beer wine or cider with a meal.<sup>49</sup>

From the age of five a child can drink alcohol in private.<sup>50</sup>

A 16 year old can buy liqueur chocolates.<sup>51</sup>

At 18 a person can buy and drink alcohol in a bar,<sup>52</sup> supermarket or other off-licence and can also apply for a licence to sell alcohol.<sup>53</sup>

## 17 Sexual consent

A 16 year old can consent to all sexual activity (heterosexual and homosexual) involving other males and females aged 16 years and over. Engaging in any sexual activity (from kissing to full penetration) above or below the age of 16 years with another person who is below the age of 16 years with another person who is below the age of 16 is a criminal offence regardless of consent.<sup>54</sup>

Anyone in a 'position of trust' (ie a person who is caring for, training supervising or being in sole charge of a person, such as a teacher,)<sup>55</sup> and who is aged 18 years or over will commit an offence if he she engages in any sexual activity with a person below the age of 18.<sup>56</sup>

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<sup>47</sup> Section 101 *Road Traffic Act 1988*.

<sup>48</sup> Section 101 *Road Traffic Act 1988*.

<sup>49</sup> Section 149 *Licensing Act 2013*.

<sup>50</sup> Section 5 *Children and Young Persons Act 1933*.

<sup>51</sup> Section 148 *Licensing Act 2013*.

<sup>52</sup> Section 146 *Licensing Act 2013*.

<sup>53</sup> Section 111 *Licensing Act 2003*.

<sup>54</sup> Sections.9 and 13 *Sexual Offences Act 2003*.

<sup>55</sup> As defined by Sections 21 and 22 *Sexual Offences Act 2003*.

<sup>56</sup> Section 16 *Sexual Offences Act 2003*.