



# Age of Legal Capacity (Scotland) Act 1991

## 1991 CHAPTER 50

### 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<sup>F1</sup>...
  - (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.

[<sup>F2</sup>(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 is capable of understanding the nature of the research; and in this subsection “ human cells ” has the same meaning as in that Schedule. ]
- <sup>F3</sup>[( 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.

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*Changes to legislation: There are currently no known outstanding effects for the Age of Legal Capacity (Scotland) Act 1991, Section 2. (See end of Document for details)*

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- (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

- F1** 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)
- F2** 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)
- F3** 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.](#)

**Changes to legislation:**

There are currently no known outstanding effects for the Age of Legal Capacity (Scotland) Act 1991, Section 2.