

Factsheet: At what age can children act independently from their parents and when do they need their parents' consent or assistance?

There are various laws that provide the answers to this question. Many of these laws are now currently being re-written and some are proposing changes to the ages of consent and capacity for children. This factsheet provides information on the current law and the proposed reforms.



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1 July 2006 (Edition 3)

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Area	Detail	Age		Source of law	
		Current Law	Proposed Reform	Current Law	Proposed reform
Age of majority	The age of majority sets the age at which a child becomes an adult. A child who reaches the age of majority is able to conclude valid contracts without parental assistance. (e.g. marriage contract, employment contracts)	<p>General law: 21</p> <p>Majority status can also be acquired by concluding a valid marriage (see the marriage section) or an 18 year old can apply to the High Court to be declared a major.</p> <p>Note that in terms of the Births and Deaths Registration Act, a major or “a person of age” is “a person of 18 years”.</p> <p>However this definition is applicable only in application of the provisions of the Births and Deaths Registration Act and does not override the current law which sets the general age of majority at 21 and allows for acquiring majority status on application or by marriage.</p>	18	<p>Common law</p> <p>Age of Majority Act nr 57 of 1972 Section 1 and 2</p> <p>Section 1 of the Birth and Deaths Registration Act 51 of 1992</p>	<p>Children’s Act 38 of 2005 (Not yet commenced. Commencement is expected in 2008) Section 17</p>
Legal contracts	Age at which a child can sign and enter into	A child’s capacity to contract is determined either by statute or by common law.	18 due to change in age of majority from	Common law	Children’s Act 38 of 2005 (Not yet commenced. Commencement is expected

	a legal contract	<p>General: 21 is the age at which contractual capacity is acquired.</p> <p>A child (under 21) can fully (without parental consent) enter into a contract in which he/she acquires rights but no obligations.</p> <p>If parental consent is granted then a child under 21 can enter into a contract where he/she acquires both rights and obligations</p> <p>However there are certain agreements into which a child under 21 cannot enter even with parental consent. Such as employment contracts where the child is under 15.</p>	21 to 18 in terms of the Children's Act.		in 2008) Section 17
Housing subsidies	Age at which a child can apply for a housing subsidy	<p>21</p> <p>The Housing Code stipulates that people eligible for subsidies are those who are "legally competent to contract i.e over 21,". The Housing Code does not expressly say that a minor</p>	18 (relating to change in the age of majority in the Children's Act.)	The National Housing Code Part 3 Chapter 2	Children's Act 38 of 2005 (Not yet commenced Commencement is expected in 2008) Section 17

		under 21 can apply with the assistance and consent of their parents. However, under the common law, a minor under 21 is competent to contract if they have the consent of their parents.			
Voting	The age at which a child can vote	18		Electoral Act 73 of 1998 Section 1	
Alcohol	Age at which a child may be sold/served alcohol	18		The Liquor Act 59 of 2003 Section 10(1)	
Gambling	Age at which a child may gamble.	18		National Gambling Act 7 of 2004 Section 12	
Drive a car	Age at which a child can drive a car	18 (17 with learner's license and an adult driver in the passenger seat.)		National Road Traffic Act 93 of 1996. Section 15	
Smoking	Age at which a child may access or be sold cigarettes	16		Tobacco Products Control Act 83 of 1993 Section 4	
Firearms	Age at which a child can legally apply for and possess a	21		The Firearms Control Act 60 of 2000 Section 9	

	firearm				
Passport	Age at which a child can apply for a passport	16 Under 16 , with signature of the parent(s) (called a child passport)		South African Passport and Travel Documents Act 4 of 1994 Sections 2 and 3 respectively	
Identity document	Age at which a child can apply for an identity document	16		Identification Act 68 of 1997 Section 15	
Change of Forename	Age at which a child can change his/her forename (first name) without parental consent	18 Below 18 if a valid marriage has been concluded Note: The Act does not make provision for a minor him/her self to apply for the change of his/her own surname.		Births and Deaths Registration Act 51 of 1992. Section 24 read with the definition of 'major' or 'person of age' See also Section 25 of this Act in relation to change of surname.	
Civil law marriage	Age at which a child may enter into	21 (without parents consent) Girls under 21 need their	18 (without parents consent)	The Guardianship Act 192 of	Children's Act 38 of 2005 (Not yet commenced. Commencement is expected

	marriage in terms of civil law	<p>parents consent to get married. If they are under the age of 15, they also need the Minister's (Home Affairs) consent.</p> <p>Boys under 21 need their parents consent to get married. If they are under the age of 18, they also need the consent of the Minister.</p> <p>Note in terms of the common law a child cannot get married below the age of puberty: below 12 years for girls and 14 years for boys</p>	Due to change to age of majority by the Children's Act.	<p>1993. Section 1(2)</p> <p>The Marriage Act 25 of 1961. Section 26(1)</p>	<p>in 2008.)</p> <p>Section 17</p>
Customary law marriage	Age at which a child may enter into a marriage in terms of customary law	<p>21 (without parents consent)</p> <p>Children under 21 need their parents consent to get married. If they are under the age of 18, they also need the consent of the Minister (Home Affairs) or an officer in the public service authorised by the Minister.</p> <p>Note that no distinction is made between boys and girls.</p>	<p>18 (without parents consent)</p> <p>Due to change to age of majority</p>	<p>Recognition of Customary Marriages Act 120 of 1998</p> <p>Section 3 read with section 9</p>	<p>Children's Act 38 of 2005 (Not yet commenced. Commencement is expected in 2008)</p> <p>Section 17</p>

Bank account	Age at which a child can open and operate a bank account	16 A 16 year old child can be a depositor at a bank where the deed of establishment or statutes of the bank makes provision for it. He/she can execute the necessary documents, cede, pledge, borrow against and generally deal with his/her deposit and enjoy all the privileges and be liable for all the obligations and conditions applicable to depositors as if he/she was a major.		The Banks Act 94 of 1990 Section 87(1) a and Mutual Banks Act 124 of 1993 Section 88(1)	
Insurance policy	Age at which a child can take out an insurance policy in their own name	18 The 18 year old can enter/vary or deal with a long term policy under which he/she is the beneficiary as if he/she was a major		Long-term Insurance Act 52 of 1998 Section 58	
Wills	Age at which a child can make their own valid will	16		The Wills Act 7 of 1953. Section 4	
Wills	Age at which a child can be a witness to some one	14		The Wills Act 7 of 1953. Section 1	

	else's will				
Work	Age at which a child may perform labour.	15 Children below the minimum school leaving age may not be employed. In terms of the Schools Act the minimum school leaving age is 15 or ninth grade whichever comes first.	Subject to the BCEA and with certain proviso's a child (under 15) can perform labour for advertisements, sport or in an artistic or cultural event. And a child can perform labour carried out within the framework of a programme registered into the NPO Act 71 of 1997.	Basic Conditions of Employment Act 75 of 1997 (BCEA) Section 43	Draft Children's Amendment Bill (April 2006 Departmental draft) Section 141
Defence Force	Age at which a child may serve in the National Defence Force	18		Defence Act 42 of 2002 Section 52	
Working at a mine	Age at which a child can work underground in a mine	18 Note that a child under 18 but over 16 may work underground as part of vocational education or		Mine Health and Safety Act 29 of 1996 Section 85	

		training.			
Admission to school	Age at which a child may be admitted to primary school	5 for Grade R 6 for Grade 1 (the child can be 5 but must be turning 6 during the year of admission to grade 1)		South African Schools Act 84 of 1996 Section 5	
Compulsory starting school age	Age at which compulsory school attendance starts (a child must be in school at this age or else the parents will be guilty of an offence)	7		South African Schools Act 84 of 1996 Section 3(1) read with section 6(a)	
Leaving school	The age at which compulsory school attendance, as required by law, ends (a parent is not guilty of an offence if the child is no longer in school after	15 or ninth grade		South African Schools Act 84 of 1996 Section 3(1).	

	the prescribed period)				
Leaving home	Age at which a child can leave home	18 This relates to the age at which a child can establish a domicile of choice. See the section on Domicile below.		The Domicile Act 3 of 1992 Section 1	
Surgical operations	Age at which a child may consent to surgical operations on him/herself and consent to such operations on his/her own child.	18	18 (without need for parents consent) 12 and of sufficient maturity and mental capacity to understand the benefits, risks and social implications of the operation: Child can consent but must be assisted by his or her parent or guardian. Under 12: Parents must consent on child's behalf	Child Care Act of 74 of 1983 Section 39(4)	Children's Act 38 of 2005 (Not yet commenced. Commencement is expected in 2008.) Section 129

Medical Treatment	Age at which a child may consent to his/her own medical treatment as well as medical treatment for his/her own child.	14	12 and of sufficient maturity and mental capacity to understand the benefits, risks and social implications of the treatment.	Child Care Act 74 of 1983 Section 39(4)	Children's Act 38 of 2005 (Not yet commenced. Commencement is expected in 2008.) Section 129
Terminating a pregnancy	Age at which a child may terminate her pregnancy	Any age The TOP Act defines a woman as: 'any female of any age'. It further states that only the women's consent is needed for the TOP and in the case of a minor, only the minor's consent is needed subject to advising such a minor to consult with the parents.		Choice On Termination of Pregnancy Act 92 of 1996. Section 5(3) and 5(2).	
Sterilisation	Age at which a child can consent to being sterilised	18 Note: Sterilisation may be performed on a child who is under the age of 18 years only if failure to do so would jeopardize the child's life or seriously impair his or her health.		The Sterilisation Act 44 of 1998 read with the Sterilisation Amendment Act 3 of 2005 Section 2	

		The Amendment Act states further that a child under 18 who falls in the above category (i.e non sterilization will be detrimental to his/her health) may be sterilized if consent is given by parents/guardian and an independent medical practitioner has consulted with the child to be sterilized and has provided a written opinion to the effect that the sterilization is in the best interest of that child.			
Alteration of Sex Description	Age at which a child can apply to Home Affairs to have his/her sex description changed on the birth register Note once a change is made to the birth register then the birth certificate (and	Any person who has altered his/her sexual characteristics or has undergone gender reassignment (i.e sex change) can apply to have the birth register changed. Thus if a child's sex description has been altered either through medical treatment or surgical operation then that child can apply to have the birth register changed no matter what age he/she is.		Combination of Legislation * Child Care Act 74 of 1983 Section 39(4) *Alteration of Sex Description and Sex Status Act 49 of 2003 *Births and Deaths Registration Act 51 of 1992 Section 27A.	

	consequently ID document) can be changed as well.	Note however that a child can only undergo treatment or surgery to affect a sex change if he/she has the capacity to consent to the treatment or surgery (see ages of consent to medical treatment and surgery above)			
Access to contraceptives	Age at which a child may access or buy condoms or other contraceptives	In terms of the National Contraception Policy of 2001 “ children of any age can approach a clinic for sexual and reproductive health information and condoms. Furthermore girls of 14 + can be prescribed any form of medical contraceptive without the assistance or knowledge of their parent/guardians. Girls under 14 need the consent of their parent/guardians before being supplied with the pill or other prescription forms of contraceptive. However adolescents who may be sexually active and/or request contraception, but are unwilling or unable to obtain their parents’/guardian’s	12 for condoms 12 for other contraceptives with the addition that proper medical advice must be given to the child and a medical examination must be performed	National Contraception Policy Guidelines: within a reproductive health framework. Department Of Health August 2001 Page15	Children’s Act 38 of 2005 (Not yet commenced. Commencement is expected in 2008) Section 134

		consent, should have their health and social needs met.			
HIV testing	Age at which a child can consent to an HIV test	14	12 Under 12 if child is mature enough to understand the benefits, risks and social implications of the test	Child Care Act 74 of 1983 Section 39(4)	Children's Act 38 of 2005 (Not yet commenced. Commencement is expected in 2008) Section 130
Disclosing HIV status	Age at which a child can consent to disclosure of his/her HIV status	14	12 Under 12 if child is mature enough to understand the benefits, risks and social implications of such disclosure.	National Health Act 61 of 2003 Section 14 (read in conjunction with the definition of user in section 1) and Child Care Act Section 39(4).	Children's Act 38 of 2005 (Not yet commenced. Commencement is expected in 2008.) Section 133
Donation of bodily organs (after death)	Age at which a child can agree to donate his/her body or any specific tissue thereof in the event of his/her death	16		The National Health Act 61 of 2003 Section 62	

Use of organs from a living person	Age at which a child can consent to use of his/her organs (e.g. kidneys) while alive	18 The Act states that a person cannot remove tissue (which includes organs) without the written consent of the person from who the tissue is taken. It then further states that tissue which is not replaceable by natural process cannot be withdrawn for medical or dental purposes from a person younger than 18		The National Health Act 61 of 2003 Section 56(2)	
Adoption	Age at which a child can consent to his/her own adoption or the adoption of his/her child.	At 10 a child can consent to his/her own adoption At any age , a child can consent to the adoption of his/her own child without assistance from his/her guardian	At 10 a child can consent to his/her own adoption. Under 10 , a child can consent to his/her own adoption, if child is mature and developed enough to understand the implication of such consent. Under 18 a	Child Care Act 74 of 1983 Section 18	Children's Act 38 of 2005 (Not yet commenced. Commencement is expected in 2008.) Section 233

			<p>child can consent to the adoption of his/her own child. Provided that the child is assisted by his/her guardian.</p> <p>18 years and older a child can consent to the adoption of his/her own child without assistance of his/her parent or guardian.</p>		
Accommodation of child prisoners	Ages at which prisoners should be detained separately.	<p>Child prisoners (under 18) must be detained separately from adult prisoners (above 18 years)</p> <p>Prisoners between 18-21 should be detained separately from prisoners over 21</p>		<p>Correctional Services Act 111 of 1998 Section 7 (c) read with the Correctional Services Regulations: GNR.914 of 30 July 2004: Section 3 (2) (h)</p>	

				See also The Constitution of the Republic of South Africa Act 108 of 1996 Section 28 (g) (i)	
Criminal capacity	Age at which a child can be tried and convicted for a criminal act.	<p>Under 7 the child cannot be tried and convicted of a crime because they are considered incapable of knowing the difference between right and wrong.</p> <p>Between the ages of 7 and 14 the child can be tried and convicted but there is a rebuttable presumption that they did not know the difference between right and wrong. The prosecution bears an onus to prove that they did know the difference between right and wrong.</p> <p>Aged 14 years and older the child is considered fully aware of the difference between right and wrong and they can therefore be tried and convicted.</p>	<p>Under 10 the child cannot be tried and convicted of a crime because they are considered incapable of knowing the difference between right and wrong.</p> <p>Between the ages of 10 and 14 the child can be tried and convicted but there is a rebuttable presumption that they did not know the difference between right</p>	Common Law	<p>Child Justice Bill B49-2002</p> <p>Section 5(1) and (2).</p>

			<p>and wrong and they did not have the capacity to act accordingly. The prosecution bears an onus to prove that they did know the difference between right and wrong</p> <p>Aged 14 years and older the child is considered fully aware of the difference between right and wrong and they can therefore be tried and convicted.</p>		
Litigation	Age at which a child can sue or be sued in his/her own name.	<p>21 (without assistance)</p> <p>Under 21: The minor must be assisted by his parents/guardian or a curator ad litem must be appointed by</p>	<p>18 (without assistance)</p> <p>Due to change in the age of majority</p>	<p>General: Common Law</p> <p>Other sources: various Statutes</p>	<p>Children's Act 38 of 2005 (Not yet commenced. Commencement is expected in 2008.)</p> <p>Section 17 (age of majority)</p>

		<p>the court.</p> <p>Note however that it is the minor who is the party to the proceedings and any rights or obligations flowing from it accrue to the minor and not the parent/guardian.</p> <p>In general the court is the upper guardian of minors and will assist a minor where the parents refuse or are not available.</p> <p>However a child has full capacity to litigate in certain instances e.g. where the child applies to be declared an adult (major), where a child is sued for maintenance of his/her child or where a minor applies to the court for a protection order in terms of the Domestic Violence Act.</p>	<p>Under 18: Every child has a right to bring and to be assisted in bringing a matter to a court.</p> <p>The general rule of the court being the upper guardian of all minors will also apply here.</p>		Section 14 and 53
Domicile of choice:	Age at which a child can acquire a domicile of choice.	18 Under 18 with majority status. On condition that he/she have the mental capacity to make that choice.		The Domicile Act 3 of 1992 Section 1	

	<p>Definition: It is the residence where you have your permanent home or principal establishment and to where, whenever you are absent, you intend to return. Every person is compelled to have one and only one domicile at a time.</p> <p>Children will be required to state their domicile when filling in contracts or when instituting legal proceedings.</p>	<p>Note that children under 18 (who don't have majority status) in foster care or in an orphanage or in other forms of custody are domiciled at the place with which he/she is most closely connected. That would be e.g the child and youth care centre.</p>			
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Service of court papers	Age at which court papers can be served on a child	16		Rule Regulating the conduct of the proceedings of the Several Provincial and Local Divisions of the Supreme Court of South Africa (ie the Uniform rules of Court) Rule 4	
Social grants (child support grant)	Age at which a child can access a CSG in their own name for themselves or their own child or their younger siblings.	16 The Act and regulations do not stipulate expressly for the situation when an application is made by the child for the child him or herself. The age of 16 refers to applications made by the child for his or her dependents only.	16	Social Assistance Act 59 of 1992 read with Section 9 of the Regulations Regarding Grants and Financial Awards to Welfare Organisations and to Persons in need of Social Relief of Distress in terms of the Social Assistance Act 59 of 1992.	Social Assistance Act 13 of 2004 Section 6 read with section 1 (definition of primary care giver) and read with section 4 of the Regulations into the Act. (No.R 162 February 2005) Not yet commenced.
Social	Age at which a	16	16	Social	Social Assistance Act 13 of

grants(care dependency grant)	child can access a CDG in their own name for themselves or their own child or their younger siblings	The Act and regulations do not stipulate expressly for the situation when an application is made by the child for the child him or herself. The age of 16 refers to applications made by the child for his or her dependents only.		Assistance Act 59 of 1992 read with Section 9 of the Regulations Regarding Grants and Financial Awards to Welfare Organisations and to Persons in need of Social Relief of Distress in terms of the Social Assistance Act 59 of 1992.	2004 Section 7 read with section 1 (definition of primary care giver) and read with section 6 of the Regulations into the Act. (No.R 162 of 2005) Not yet commenced.
Social grants (adult disability grant)	Age at which a child can access a disability grant for his/herself	18	18	Social Assistance Act 59 of 1992 read with Section 2 and section 9 of the Regulations Regarding Grants and Financial Awards to Welfare Organisations and to Persons in	Social Assistance Act 13 of 2004 Section 9 read with section 3 of the Regulations into the Act. (No.R 162 of 2005) Not yet commenced.

				need of Social Relief of Distress in terms of the Social Assistance Act, 59 of 1992.	
Social grants (foster child grant)	Age at which a child can access a FCG in their own name for their siblings	<p>18 if the child has been placed in his/her custody by the court in terms of the Child Care Act. (According to the Department of Social Development - personal communication):</p> <p>A foster parent is any person (except a parent/guardian) in whose custody a child has been placed in terms of the Act.</p> <p>If an 18 year old is taking care of his 9 year old sibling and they don't have parents the 18 year old can with the assistance of a social worker get the court to declare the 9 yr old child a child in need of care in terms of the Act. After the court enquiry as to whether the child is a child in need of care the court can make a finding that the child</p>	18	<p>Social Assistance Act 59 of 1992 read with section 9 of the Regulations Regarding Grants and Financial Awards to Welfare Organisations and to Persons in need of Social Relief of Distress in terms of the Social Assistance Act 59 of 1992.</p> <p>See also Child care Act 74 of 1983</p> <p>Section 1 read with sections</p>	<p>Social Assistance Act 13 of 2004</p> <p>Section 8 read with section 10 of the Regulations to the Act (No.R 162 of 2005)</p> <p>Not yet commenced.</p>

		remain in the custody of the person in whose custody he/she was before the commencement of the proceedings (eg the 18 yr old), under the supervision of the social worker.		10,14 and15	
Sex	Age at which a child is considered mature enough to engage in sex. Any adult having sex with a child under this age is committing a crime. Note: Sex between two children of similar age is not a crime. However, if the sex is coercive, it may be considered a crime. A	16 for heterosexual sex 19 for homosexual sex It is a defence for an accused against a charge under this section if at the time of the offence, (a) the victim was a prostitute, or (b) the accused was under 21 and it's his/her first offence.	16 According to the Bill it is an offence to have sex with a child who is over 12 but under 16 years, even with that child's consent. Note also that it is a defence to a charge of committing a indecent act with a child below the age of 16 (<u>with the consent of the child</u>) if the accused was	Sexual Offences Act No 23 of 1957 Section 14	Criminal Law (Sexual Offences) Amendment Bill [B50-2003] Section 9

	significant age gap between the two children can indicate coercive circumstances.		below the age of 16 and the age of the accused did not exceed the age of such child by more than three years at the time of the alleged commission of the offence.		
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