

DRAFT AGE OF MAJORITY (JERSEY) LAW 199

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by the Legislation Committee**



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REPORT

Background

Jersey law has always followed ancient Norman customary law in classing anyone under the age of 20 as a minor. Although 20 is the age at which people gain full legal status, the law sets minimum ages below that for a wide variety of rights and responsibilities. For example, the age of criminal responsibility is 10. At 16, a person is allowed to marry with parental consent and at 18 years he or she acquires the right to vote. The fact that the person is a minor in any of these cases is irrelevant. What then are the remaining legal effects of being under 20 years of age in Jersey?

The following situations are the ones that are relevant.

If a minor owns property

A *tutelle* consisting of a *tuteur* and six *électeurs* appointed by the Royal Court is necessary to administer the property of a minor who inherits or otherwise acquires immovable or movable property.

Prescription

There are various time limits within which certain civil proceedings can be brought from the day a cause of action accrues. However, in the case of a minor, time does not run unless the minor has a *tuteur*.

Contracts

In general a contract entered into by a minor is voidable unless the contract is for 'necessaries' i.e. something supplied that was really necessary and where there was a duty to provide the article involved.

Torts

There is ancient authority to the effect that a father may be held liable to pay for any damage caused by the torts of his minor child.

However, liability is probably confined to where the child is employed by his parent and commits a tort in the course of his employment. Also

the parent would be liable if the child's tort was due to the parent's negligent control of the child or if he actually authorised his child to commit the tort.

Marriage

As already stated, a person may marry having attained 16 years of age. However where the marriage of a minor is intended to be solemnized on the authority of a licence or a certificate issued by the Superintendent Registrar, the consent of the parent or guardian is, with certain limited exceptions, required.

It has been made clear by statute that the marriage of a female minor does not confer legal capacity on her. But there is uncertainty whether the marriage of a male minor confers full legal capacity upon him. The balance of opinion is that marriage did not under the *ancienne coutume* confer full capacity upon a male under 20 years of age and does not do so today.

Court proceedings

A minor cannot institute an action without the authority of his father or *tuteur*. The Royal Court Rules 1992 provide in respect of actions by and against minors that -

“An infant may commence, prosecute, defend, intervene in, or make any application in, any action before the Court by a guardian *ad litem* appointed for that purpose”.

The term 'infant' is simply another legal term for a person not of full age.

Deeds poll

Only a person who has attained majority may execute a deed poll. However a parent may execute a deed poll on behalf of his or her minor child subject to the observance of certain formalities.

Adoption

It is not possible to adopt a person who has attained the age of majority.

The need for change

In Jersey, persons between the ages of 18 and 20 are deemed at law to be 'infants'. They are not taken to be fully responsible for their own acts except insofar as criminal responsibility is concerned. They are civilly incapacitated. The Legislation Committee is convinced that the lesser legal status imposed upon such persons bears no relationship to the reality of modern society and creates not only difficulties but, in some cases, real injustice. In the United Kingdom, the age of majority has been 18 since 1969.

In the area of contracts, persons between the ages of 18 and 20 years routinely purchase goods which fall outside the narrow definition of 'necessaries'. The vast majority of such contracts are technically unenforceable and do not give rise to legal obligations. The Committee can think of no good reason for holding that persons of 18 or 19 years of age, who might well be leading quite independent lives, should be deprived of the full legal capacity to purchase goods from a shop or, as free individuals, to enter into agreements as they think fit.

The lack of capacity to enter into agreements may be contrasted with the responsibility readily assumed of people between 18 and 20 years of age who serve in the Armed Forces. It may be contrasted with the responsibility they assume in casting votes at public elections. Similar considerations apply to the requirement of parental consent to marriage which in some cases may involve having to overcome an arbitrary or vindictive refusal of consent on the part of a parent. The same is true of the registration of a deed poll.

The Committee believes also that the assumption of responsibility for oneself should prevail when it comes to property which a person of 18 or 19 years of age may own. The imposition of a *tutelle* may be seen as a brake on ill thought out decisions to dispose of property, but it is also a bar on a person assuming responsibility for his or her own affairs. If that person is to have freedom to contract, he or she must also have freedom to dispose of his or her own property.

In the area of torts, there is, as stated above, the possibility that a father could be held liable to pay for damage caused by the torts of his 18/19 year old son or daughter. Albeit that this is unlikely to arise in practice,

the possibility of it doing so is unacceptable if liability is based not upon any fault of the parent but simply upon the fact of parenthood of a minor.

In the area of court proceedings, legal procedures have to be gone through (inevitably incurring costs) in order for an action to be instituted or defended by a person of 18 or 19 years of age. No useful purpose can be served by having to invoke costly legal procedures when the person involved is, in the eyes of society, already an adult.

Conclusion

The Legislation Committee is mindful of the fact that the age of majority in Jersey stems from ancient Norman customary law. The Committee does not believe that laws which have served the Island for several hundred years should be amended without careful consideration. But the question is 'how does this law serve the Island?'

The Committee, in the light of all the considerations above, has concluded that this law no longer serves the best interests of the Island.

People at 18 are expected to assume the responsibilities of adulthood: the purpose of this draft Law is to give them the legal capacity to do so.

Explanatory Note

The purpose of this draft Law is to reduce the age of majority from twenty years to eighteen years.

Article 1 is the interpretation provision.

Article 2 reduces the age of majority to eighteen years, with effect from the day the Law comes into force. A person who is over the age of eighteen but under twenty on that day will attain his majority on that day.

Article 3 has the effect that “the age of majority” and related expressions used without definition in existing and future enactments and in deeds, wills and other instruments made after the Law comes into force are to be construed in accordance with *Article 2*. Deeds, wills and other instruments made before the Law comes into force are not affected.

Article 4 has the effect that, after the Law comes into force, a tutelle will end when the person subject to it attains his majority. A tutelle in respect of a person who has attained the age of eighteen before the day the Law comes into force will end on that day.

Article 5 makes it clear that a person under the age of majority who marries does not acquire full legal capacity by reason of that marriage.

Article 6 amends the Children (Jersey) Law 1969 so as to enable the Health and Social Services Committee to assist persons previously in its care who are over the age of majority but under twenty-one.

Article 7 gives effect to the *Schedule*.

Article 8 gives the short title of the draft Law and provides for it to come into force on a day appointed by Act of the States.

Part I of the Schedule makes consequential amendments to other Laws.

Part II of the Schedule makes transitional provisions.

AGE OF MAJORITY (JERSEY) LAW 199

A LAW to reduce the age of majority and to make provision incidental upon and supplemental thereto; sanctioned by Order of Her Majesty in Council of the

(Registered on the day of 199)

STATES OF JERSEY

The day of 199

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law -

ARTICLE 1

Interpretation

(1) In this Law, "commencement date" means the date this Law comes into force.

(2) A reference in this Law to an enactment is a reference to that enactment as amended from time to time.

ARTICLE 2

Reduction in the age of majority

(1) As from the commencement date, a person shall attain full age on attaining the age of eighteen years instead of on attaining the age of twenty years.

(2) A person who, before the commencement date, has attained the age of eighteen years, but not the age of twenty years, shall attain full age on the commencement date.

ARTICLE 3

Construction of enactments

(1) Article 2 of this Law applies for the purposes of any rule of law and, in the absence of a definition or of any indication of a contrary intention, for the construction of “full age”, “the age of majority”, “the age of legal capacity”, “infant”, “minor” and similar expressions (including such expressions rendered in the French language) in -

- (a) any enactment, whether passed or made before, on or after the commencement date; and
- (b) any deed, will or other instrument of whatever nature (not being an enactment) made on or after the commencement date.

(2) Notwithstanding any rule of law, a will or codicil executed before the commencement date shall not be treated for the purposes of this Article as made on or after the commencement date by reason only that the will or codicil is confirmed by a codicil executed on or after that date.

ARTICLE 4

Tutelles

(1) As from the commencement date, a tutelle shall cease to have effect upon the person subject to it attaining the age of majority.

(2) Where, before the commencement date, a person subject to a tutelle has attained the age of eighteen years, the tutelle shall cease to have effect upon the commencement date.

ARTICLE 5

Marriage of person under the age of majority

For the avoidance of doubt, it is declared that the marriage of a person who has not attained the age of majority does not confer full legal capacity on him.

ARTICLE 6

Extension of powers under Children (Jersey) Law 1969¹

In the Children (Jersey) Law 1969 -

- (a) in the long title,² after the words “protection of children,” there shall be added the words “to enable support and assistance to be provided to certain young persons,”;
- (b) in Article 1,³ in paragraph (1), after the definition of “voluntary home” there shall be added the following definition -
 - “ ‘young person’ means a person who has attained the age of majority but has not attained the age of twenty-one years;”;
- (c) at the end of the heading to Part X⁴ there shall be added the words “AND ASSISTANCE FOR YOUNG PERSONS”;
- (d) at the end of Article 88⁴ there shall be added the words “and the powers of the Committee in relation to young persons previously in its care”; and

¹ Volume 1968-1969, page 247, Volume 1970-1972, page 511, Volume 1973-1974, page 371, Volume 1979-1981, page 25, Volume 1986-1987, pages 20 and 173, Volume 1994-1995, pages 58 and 118, and Volume 1996-1997, pages 15 and 616.

² Volume 1968-1969, page 247.

³ Volume 1968-1969, page 251.

⁴ Volume 1968-1969, page 326.

- (e) after Article 91⁵ there shall be added the following Article -

“ARTICLE 91A

POWER TO ASSIST YOUNG PERSONS PREVIOUSLY
IN CARE

The Committee may provide support and assistance, in such manner as it thinks fit, to a young person who, before attaining the age of majority, was committed to or received into its care under this Law where it appears to the Committee to be desirable to do so, in the interests of the welfare of the young person.”.

ARTICLE 7

Consequential amendments of other enactments and transitional arrangements

(1) Part I of the Schedule to this Law shall have effect for the purpose of amending the enactments specified in it in the manner specified.

(2) Part II of the Schedule to this Law shall have effect for the purpose of making transitional arrangements.

ARTICLE 8

Short title and commencement

(1) This Law may be cited as the Age of Majority (Jersey) Law 199 .

(2) This Law shall come into force on such day as the States may by Act appoint.

⁵ Volume 1968-1969, page 328.

SCHEDULE

CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL
ARRANGEMENTS

(Article 7)

PART I

CONSEQUENTIAL AMENDMENTS OF OTHER ENACTMENTS

(Article 7(1))

Loi (1925) étendant les droits de la femme mariée

1. Article 4 of the Loi (1925) étendant les droits de la femme mariée⁶ is hereby revoked.

Adoption (Jersey) Law 1961

2. In the Adoption (Jersey) Law 1961 -
- (a) in Article 1,⁷ in paragraph (1), in the definition of “infant”, for the words “twenty years of age” there shall be substituted the words “the age of majority”; and
 - (b) in Article 23,⁸ in paragraph (3), for the words “or on his attaining the age of eighteen years, whichever first occurs” there shall be substituted the words “or, if none is made, on his attaining the age of majority”.

Marriage of Infants (Jersey) Law 1961

3. In the Marriage of Infants (Jersey) Law 1961 -

⁶ Tomes IV-VI, page 579.

⁷ Volume 1961-1962, page 363.

⁸ Volume 1961-1962, page 381.

- (a) in Article 1,⁹ in the definition of “infant”, for the words “the age of twenty years” there shall be substituted the words “the age of majority”;
- (b) in the heading to Article 2,⁹ for the words “THE AGE OF TWENTY YEARS” there shall be substituted the words “THE AGE OF MAJORITY”.

Children (Jersey) Law 1969

- 4. In the Children (Jersey) Law 1969 -
 - (a) in Article 1,¹⁰ in paragraph (1), for the definition of “child” there shall be substituted the following definition -

“ ‘child’, where used without qualification and except in Articles 50 and 52 and Parts VI and XI of this Law, means a person under the age of majority;”;
 - (b) in Article 28,¹¹ in sub-paragraph (d) of paragraph (1), after the words “not exceeding three years” there shall be inserted the words “and expiring on or before his attaining the age of majority”;
 - (c) in Article 29,¹² in paragraph (1), the words “and he is under the age of eighteen years” shall be deleted;
 - (d) in Article 30¹² -
 - (i) in paragraph (3), for the words “the age of twenty years” there shall be substituted the words “the age of majority”, and
 - (ii) in sub-paragraph (d) of paragraph (9), after the words “not exceeding three years” there shall be

⁹ Volume 1961-1962, page 311.

¹⁰ Volume 1968-1969, page 248.

¹¹ Volume 1968-1969, page 277, and Volume 1970-1972, page 511.

¹² Volume 1968-1969, page 279, and Volume 1970-1972, page 511.

inserted the words “and expiring on or before his attaining the age of majority”;

- (e) in Article 53,¹³ in paragraph (4), for the words “the age of twenty years” there shall be substituted the words “the age of majority”;
- (f) in Article 66,¹⁴ in paragraph (b) for the words “the age of eighteen years” there shall be substituted the words “the age of majority”;
- (g) in Article 82,¹⁵ in paragraph (2), for the words “the age of twenty years” there shall be substituted the words “the age of majority”; and
- (h) in Article 85,¹⁶ in paragraph (1), for the words “the age of twenty years” there shall be substituted the words “the age of majority”.

Consent to Medical Treatment (Jersey) Law 1973

5. In Article 1 of the Consent to Treatment (Jersey) Law 1973,¹⁷ in paragraph (1), for the words “twenty years of age” and the words “the age of twenty years” there shall be substituted the words “the age of majority”.

Criminal Justice (Young Offenders) (Jersey) Law 1994

6. In Article 1 of the Criminal Justice (Young Offenders) (Jersey) Law 1994,¹⁸ in paragraph (1), in the definition of “guardian”, for the words “the age of twenty” there shall be substituted the words “the age of majority”.

¹³ Volume 1968-1969, page 294, Volume 1979-1981, page 27, and Volume 1996-1997, page 16.

¹⁴ Volume 1968-1969, page 306.

¹⁵ Volume 1968-1969, page 319.

¹⁶ Volume 1968-1969, page 325.

¹⁷ Volume 1973-1974, page 189.

¹⁸ Volume 1994-1995, page 35.

PART II

TRANSITIONAL ARRANGEMENTS

(Article 7(2))

Adoption (Jersey) Law 1961¹⁹

7.-(1) Where, immediately before the commencement date, there is in force an interim order in respect of a person to whom paragraph (2) of Article 2 of this Law applies, the interim order shall cease to have effect on the commencement date.

(2) Where, on the commencement date, there is in force an interim order in respect of a person under the age of majority but who will attain that age within the period for which the order has effect, the order shall be deemed to have been made for a period expiring on the date the person attains the age of majority.

(3) In this paragraph, “interim order” means an order made under Article 9 of the Adoption (Jersey) Law 1961.²⁰

Children (Jersey) Law 1969²¹

8.-(1) Where, immediately before the commencement date, there is in force a supervision order or an interim order in respect of a person to whom paragraph (2) of Article 2 of this Law applies, the order shall cease to have effect on the commencement date.

(2) Where, on the commencement date, there is in force a supervision order or an interim order in respect of a person under the age of majority but who will attain that age within the period for which the order has effect, the order shall be deemed to have been made for a period expiring on the date the person attains the age of majority.

(3) In this paragraph -

¹⁹ Volume 1961-1962, page 363, Volume 1963-1965, pages 103 and 447, Volume 1968-1969, page 426, Volume 1994-1995, pages 118 and 353, and R & O 8859.

²⁰ Volume 1961-1962, page 370.

²¹ Volume 1968-1969, page 247, Volume 1970-1972, page 511, Volume 1973-1974, page 371, Volume 1979-1981, page 25, Volume 1986-1987, pages 20 and 173, Volume 1994-1995, pages 58 and 118, and Volume 1996-1997, pages 15 and 616.

“supervision order” means an order made under subparagraph (d) of paragraph (1) of Article 28 or subparagraph (d) of paragraph (9) of Article 30 of the Children (Jersey) Law 1969;²² and

“interim order” means an order made under paragraph (4) of Article 28 of that Law²³.

²² Volume 1968-1969, pages 278 and 281.

²³ Volume 1968-1969, page 278.