

## **Minors' Contracts**

In August 1985, the Commission published its Report on [Minors' Contracts \(LRC 15–1985\)](#). This Report arose out of the examination of the law relating to the age of majority which in December 1975 the then Attorney General requested the Commission to undertake.

The Report recommended a restatement of the entire law relating to minors' contracts. It recommended the enactment of legislation which would introduce a general principle of restitution whereby a contract made between a minor and an adult would be enforceable by the minor against the adult but unenforceable by the adult against the minor; the adult would however be entitled to apply to the Court for compensation from the minor based on restitutionary principles. In making a decision on any such application it was recommended that the Court should have regard to

- (a) The subject matter and nature of the contract;
- (b) The nature and value of property where the contract relates (in part or entirely) to property;
- (c) The age, mental capacity and general experience of the minor at the time of making the contract, and at the time of the hearing, respectively;
- (d) The specific experience and knowledge of the minor relative to the particular circumstances of the contract;
- (e) The respective economic circumstance of the parties at the time of the making of the contract and at the time of the hearing, respectively;
- (f) The circumstances surrounding the making of the contract and, in particular, the reasonableness and fairness, or otherwise, of the conduct of each party relative thereto;
- (g) The extent and value of any actual benefit obtained by each party as a result of making the contract;
- (h) The amount, if any, of any benefit still retained by each party at the time of the hearing;
- (i) The expenses or losses sustained or likely to be sustained by each party in the making and discharging of the contract;
- (j) All other relevant circumstances including whether the goods or services which were the subject matter of the contract were suitable to the conditions in life of the minor and to the actual requirements at the time of making of the contract, so far as the other party was, or could reasonably be, aware having regard to the circumstances, including any information given by the minor on the question.

The Report recommended that the restitutionary principle should apply to both concluded transactions and those not yet concluded. The Report proposed that the Court, in exercising its discretion in cases where a contract has been performed, should be required to have regard to the difficulties likely to result from reopening the contract for the party who contracted with the minor.

The Report recommended that property should pass irrespective of the fact that the contract is unenforceable because one of the parties is a minor.

The Report recommended that special provision should be made for contracts of employment. It recommended that a contract of employment or for personal services should bind a minor if, taken as a whole, it is for the minor's benefit; however, the Report went on to recommend that the present law should be modified so that where the Court finds that the contract, taken as a whole, is not for the minor's benefit because it contains a particular term or terms, then, rather than being obliged to declare the entire contract unenforceable against the minor, the Court should have power to strike out the term or terms in question if they can be severed from the remainder of the contract.

The Report recommended that contracts of loans to minors should remain void as they are under the existing law.

The Report recommended that minors, once they have come of age, should be free to ratify undertakings made during their minority as well as to make new contracts with fresh consideration with respect to such undertakings.

The Commission recommended that the proposed legislation should include a procedure enabling the Court to validate a proposed contract when the minor is a party to it, or to confer full contractual capacity on a minor. In deciding whether to validate a proposed contract, it was recommended that the Court should have regard to all the circumstances including:

- (a) the age of the minor
- (b) the nature, subject matter and terms of the contract;
- (c) the reasonable likelihood of performance of the contract by each of the parties to it;
- (d) the requirements of the minor, having regard to his particular circumstances;
- (e) the financial resources of the minor;
- (f) the wishes, where they can reasonably be ascertained, of a guardian or guardians of the minor

The Report recommended that the proposed legislation should retain the rule that the minor should not be exposed to an action in tort where this would amount to an indirect enforcement of an unenforceable contract. It was further recommended that in cases where there is a misrepresentation by the minor as to age, the restitutionary principles applicable to contracts with such a minor should be applicable. The Report also recommended that an adult who guarantees any contact made by a minor should be liable on the guarantee.

### **Draft Legislation in Report**

Draft legislative provisions are included in the Report.

### **Information on Implementation**

Recommendations of the Commission were, in part, approved in the Report of the Sales Law Review Group (2011). The Department of Jobs, Enterprise and Innovation also published the

Draft Scheme of a *Consumer Rights Bill* (May 2015 )and the Government Legislation Programme Autumn 2015 (Section C) noted a *Consumer Rights Bill* to be published.