

# Legal guide to age thresholds for children and young people

*April 2011 (Edition 5)*

**At what age can children and young people make decisions and act on their own without assistance from their parents?**

**What are the age thresholds for children to access social grants or housing subsidies?**

**At what age can a child, be prosecuted for a crime or be detained in prison?**

There are various laws that provide the answers to these questions, and others like them. This legal guide provides information on the current laws, and some proposed reforms.

**Produced by Prinslean Mahery and Paula Proudlock (Children's Institute, University of Cape Town).**

For more information, please contact [prinslean.mahery@uct.ac.za](mailto:prinslean.mahery@uct.ac.za) or [paula.proudlock@uct.ac.za](mailto:paula.proudlock@uct.ac.za).



**UNIVERSITY OF CAPE TOWN**  
IYUNIVESITHI YASEKAPA • UNIVERSITEIT VAN KAAPSTAD

<b>Contents</b>	<b>Page</b>
<a href="#"><u>Definition of a child</u></a>	<b>6</b>
<a href="#"><u>Age of majority</u></a>	<b>6</b>
<a href="#"><u>Legal contracts</u></a>	<b>7</b>
<a href="#"><u>Long-term insurance policy</u></a>	<b>7</b>
<a href="#"><u>Director of a company</u></a>	<b>8</b>
<a href="#"><u>Bank accounts</u></a>	<b>8</b>
<a href="#"><u>Credit</u></a>	<b>9</b>
<a href="#"><u>Wills</u></a>	<b>9</b>
o <a href="#"><u>Own will</u></a>	<b>9</b>
o <a href="#"><u>Witness to a will</u></a>	<b>9</b>
<a href="#"><u>Legal proceedings</u></a>	<b>9 - 11</b>
o <a href="#"><u>Litigation</u></a>	<b>9</b>
o <a href="#"><u>Service of court papers on a person being sued</u></a>	<b>10</b>
o <a href="#"><u>Service of court papers: by leaving it with a child at certain premises</u></a>	<b>11</b>
<a href="#"><u>Domicile of choice</u></a>	<b>11</b>
<a href="#"><u>Leaving home</u></a>	<b>12</b>
<a href="#"><u>Employment</u></a>	<b>12 - 15</b>
o <a href="#"><u>Employment (general)</u></a>	<b>12</b>
o <a href="#"><u>Working underground at a mine</u></a>	<b>13</b>
o <a href="#"><u>Defence force</u></a>	<b>13</b>
o <a href="#"><u>Police force</u></a>	<b>14</b>
o <a href="#"><u>Fire brigade</u></a>	<b>14</b>
o <a href="#"><u>Debt collector</u></a>	<b>15</b>

○ <a href="#">Credit provider or debt counsellor</a>	15
○ <a href="#">Working in the liquor industry</a>	15
<b><a href="#">Alcohol</a></b>	15
<b><a href="#">Gambling</a></b>	15
<b><a href="#">Tobacco products</a></b>	15 – 16
○ <a href="#">Selling or supplying tobacco products to a child</a>	15
○ <a href="#">Selling or supplying tobacco products at health facilities or at education institutions where children are being educated</a>	16
○ <a href="#">Smoking in the presence of young children</a>	16
<b><a href="#">Firearms</a></b>	16
<b><a href="#">Driving</a></b>	16
○ <a href="#">Driving a car</a>	16
○ <a href="#">Driving a motorcycle or quad-bike</a>	16
<b><a href="#">Voting</a></b>	17
○ <a href="#">Registering as a voter</a>	17
○ <a href="#">Voting</a>	17
<b><a href="#">Identity</a></b>	17 – 19
○ <a href="#">Identity document</a>	17
○ <a href="#">Passport</a>	17
○ <a href="#">Change of forename or surname</a>	18
○ <a href="#">Alteration of sex description in birth register</a>	19
<b><a href="#">Schooling</a></b>	19 – 20
○ <a href="#">Admission to school: Grade R (reception year)</a>	19
○ <a href="#">Admission to school: Grade 1</a>	19
○ <a href="#">Compulsory school starting age</a>	20
○ <a href="#">Leaving school</a>	20

<b><u>Consenting to sex</u></b>	<b>20 – 22</b>
○ <u>Children capable of consenting to sex</u>	<b>20</b>
○ <u>Children capable but not mature enough to consent to sex</u>	<b>21</b>
○ <u>Children incapable of consenting to sex</u>	<b>22</b>
<b><u>Marriages</u></b>	<b>22 – 24</b>
○ <u>Civil law marriage</u>	<b>22</b>
○ <u>Customary law marriage</u>	<b>23</b>
○ <u>Civil union</u>	<b>24</b>
<b><u>Health services and medical procedures</u></b>	<b>24 – 31</b>
○ <u>Surgical operations</u>	<b>24</b>
○ <u>Medical treatment</u>	<b>25</b>
○ <u>Refusing medical treatment; surgical operations</u>	<b>25</b>
○ <u>Sterilisation</u>	<b>26</b>
○ <u>Terminating a pregnancy</u>	<b>27</b>
○ <u>Condoms</u>	<b>28</b>
○ <u>Contraceptives other than condoms</u>	<b>28</b>
○ <u>HIV testing</u>	<b>29</b>
○ <u>Disclosing HIV status</u>	<b>29</b>
○ <u>Vaccinations/immunisations</u>	<b>30</b>
○ <u>Donation of bodily organs (after death)</u>	<b>31</b>
○ <u>Donation of non-replaceable organs by a living person</u>	<b>31</b>
○ <u>Donating blood (or replaceable tissue)</u>	<b>31</b>
<b><u>Cultural practices</u></b>	<b>32</b>
○ <u>Circumcision</u>	<b>32</b>
○ <u>Virginity testing</u>	<b>32</b>
<b><u>Housing subsidies</u></b>	<b>32</b>

<b><u>Criminal matters</u></b>	<b>33 – 36</b>
○ <u>Criminal capacity</u>	<b>33</b>
○ <u>Detaining unconvicted child offenders</u>	<b>34</b>
○ <u>Sentencing children</u>	<b>35</b>
○ <u>Accommodation of child prisoners</u>	<b>36</b>
○ <u>Appeals against court orders</u>	<b>36</b>
<b><u>Social assistance grants</u></b>	<b>37 – 41</b>
○ <u>Child support grant (CSG): child age limits</u>	<b>37</b>
○ <u>Child support grant: caregiver age limits</u>	<b>37</b>
○ <u>Care dependency grant (CDG): child age limits</u>	<b>38</b>
○ <u>Care dependency grant: caregiver age limits</u>	<b>38</b>
○ <u>Adult disability grant</u>	<b>38</b>
○ <u>Foster child grant (FCG): child age limit</u>	<b>39</b>
○ <u>Foster child grant: foster parent's age limit</u>	<b>40</b>
<b><u>Care arrangements</u></b>	<b>41 – 42</b>
○ <u>Children in alternative care</u>	<b>41</b>
○ <u>Child-headed household</u>	<b>42</b>
<b><u>Adoption</u></b>	<b>42</b>
○ <u>Adopting a child</u>	<b>42</b>
○ <u>Own adoption</u>	<b>42</b>
○ <u>Adoption of a child's own child</u>	<b>42</b>
<b><u>Acknowledgements, disclaimer, citation suggestion and contact details</u></b>	<b>43</b>

Area	Detail	Age	Source of law
<b>Definition of a child</b>	The Bill of Rights and the Children's Act define a 'child' as 'a person under the age of 18 years'. This means that all people under the age of 18 years are entitled to the protection guaranteed by section 28 of the Bill of Rights and the provisions of the Children's Act.	<b>18</b>	Constitution of the Republic of South Africa Act 108 of 1996. Section 28(3).  Children's Act 38 of 2005. Section 1.
<b>Age of majority</b>	The age of majority sets the age at which a child becomes a 'major' (this is a legal term for 'adult'). A child who reaches the age of majority is able to conclude valid contracts without parental assistance (e.g. marriage and employment contracts).	<b>18</b>  Majority status can also be acquired by <b>a child under 18</b> if they get married (see the <a href="#">'marriage'</a> section for information on the circumstances under which children under 18 can get married).  Note: <ul style="list-style-type: none"> <li>• The age of majority used to be 21 but was changed in 2007 to bring it in line with the definition of a child in the Constitution.</li> <li>• The child protection provisions in the Bill of Rights and the Children's Act are afforded to all persons under the age of 18.</li> <li>• It is a question for debate whether a child under 18 who acquires majority status through marriage, remains a "child" for the purposes of the Bill of Rights and the Children's Act or whether such a child loses the protection of section 28 in the Bill of Rights or the provisions set out in the Children's Act.</li> </ul>	Children's Act 38 of 2005. Section 17.  Common law (in relation to acquisition of majority status through marriage).

Area	Detail	Age	Source of law
<b>Legal contracts</b>	Age at which a child can sign and enter into a legal contract.	<p>General: A child acquires legal capacity to enter into a legal contract at <b>18</b> (unless another age is specifically set out in a particular law).</p> <p>A child <b>under 18</b> can enter into a contract (without the assistance of a parental or guardian) if the contract is about the child acquiring rights but no obligations.</p> <p><b>If assisted by a parent or guardian, a child under 18</b> can enter into a contract where he/she acquires both rights and obligations.</p> <p>However, there are certain contracts into which a child under 18 cannot enter, even with the assistance of a parent or guardian (such as employment contracts when the child is under 15).</p>	Children’s Act 38 of 2005. Sections 17, 18(3)(b), read with the common law.
<b>Long-term insurance policy</b>	Age at which a person can take out a long-term insurance policy in his/her own name.	<p><b>18</b></p> <p>Long-term policy means “an assistance policy, a disability policy, fund policy, health policy, life policy or sinking fund policy, or a contract comprising a combination of any of those policies; and includes a contract whereby any such contract is varied”</p>	Long-term Insurance Act 52 of 1998. Section 58. Section 1.

Area	Detail	Age	Source of law
<b>Director of a company</b>	Age at which a person can be the director of a company.	<p><b>18</b></p> <p><i>Amendment soon to come into operation:</i>  <i>The new Companies Act provides that ‘unemancipated minors’ are part of the group of persons considered ineligible to be the director of a company. This implies that <b>a child under 18 who has been emancipated can be a director of a company.</b></i></p> <p>An emancipated minor is a child who has been given express or implied consent by a parent or guardian to participate in commercial contracts independently.</p>	<p>Companies Act 61 of 1973.  Section 218(1)(b).</p> <p><i>Amendment:</i> New Companies Act 71 of 2008.  Section 69(7)(b).</p> <p><i>At the time of publication, the Act has been passed by Parliament and signed by the President, but was not yet in operation.</i></p>
<b>Bank accounts</b>	Age at which a child can open and operate a bank account.	<p><b>16</b></p> <p>A 16-year-old child can be a depositor at a bank where the deed of establishment or statutes of the bank make provision for it. He/she can execute the necessary documents, cede, pledge, borrow against and generally deal with his/her deposit and can enjoy all the privileges and be liable for all the obligations and conditions applicable to depositors as if he/she was a major (adult).</p>	<p>Banks Act 94 of 1990.  Section 87(1).</p> <p>and</p> <p>Mutual Banks Act 124 of 1993.  Section 88(1).</p>



<b>Area</b>	<b>Detail</b>	<b>Age</b>	<b>Source of law</b>
<b>Credit</b>	Age at which a person can apply for credit in their personal capacity.	<b>18</b>  However the Act implies that an emancipated minor can apply for credit.  An emancipated minor is a child who has been given express or implied consent by a parent or guardian to participate in commercial contracts independently.	National Credit Act 34 of 2005. Section 60(1) read with sections 61(4) and 89(2)(a).
<b>Own will</b>	Age at which a child can make his/her own valid will.	<b>16</b>	Wills Act 7 of 1953. Section 4.
<b>Witness to a will</b>	Age at which a child can be a witness to someone else's will.	<b>14</b>	The Wills Act 7 of 1953. Section 1.
<b>Litigation</b>	Age at which a child can sue or be sued in his/her own name.  The Bill of Rights gives everyone (including children) the right to have access to court and the right to have legal representation. The Children's Act builds on the Bill of Rights by specifying that every child has the right to bring, and to be assisted in bringing, a matter to a court. As a party to proceeding in the children's court, a child is entitled to legal representation.  In cases where a child is unrepresented and the court is of the	<b>18</b>  At this age the child becomes a major/adult and can therefore litigate in his/her own name.  <b>Under 18:</b> In terms of common law: <ul style="list-style-type: none"> <li>• a child has limited capacity to litigate and would need parental assistance (or a court-appointed curator) to institute legal actions in his/her own name.</li> <li>• litigation for or against a child under the age of seven has to be done in the name of the parent or curator.</li> <li>• litigation for or against a child between seven</li> </ul>	Constitution of the Republic of South Africa Act 108 of 1996. Section 28(1)(h), 34 and 38.  Children's Act 38 of 2005. Sections 17, 14, 54, 55 read with the common law requirements regarding the capacity of minors to litigate.

	<p>opinion that the child needs legal representation, the court can refer the matter to the Legal Aid Board to consider appointing a legal representative for the child.</p> <p>On a practical level, most children will require the assistance of an adult, usually their parent, to access the courts. If the parents refuse to assist the child, are not available, or there is a conflict of interests between the child and the parent, the High Court must be requested (by the child or a person helping the child) to appoint a curator to assist the child.</p>	<p>and 18 is done in the child's name.</p> <p>The Constitution stipulates that children have a right to legal representation, which includes the right to have a curator appointed or to have a separate legal representative appointed. There have been several cases where a child acted in his/her own name with legal representation.</p> <p>A child has full capacity to litigate in certain instances, e.g. where a child is sued for maintenance of his/her own child or where a child applies to the court for a protection order in terms of the Domestic Violence Act 116 of 1998.</p>	
<b>Area</b>	<b>Detail</b>	<b>Age</b>	<b>Source of law</b>
<b>Service of court papers on a person being sued</b>	Age at which court papers can be served on a person.	<p><b>18</b></p> <p>The general rule is that court papers must be served directly on the person being sued. However, if the person being sued is a "minor" (i.e. under 18 years), then the court papers must be served on the parent, guardian or curator of the "minor".</p>	Rules regulating the conduct of the proceedings of the several provincial and local divisions of the High Court of South Africa (i.e. the Uniform Rules of Court). Rule 4(1).

Area	Detail	Age	Source of law
<b>Service of court papers: by leaving it with a child at certain premises</b>	Age at which a child can be handed court papers meant for someone being sued.	<b>16</b>  If the person being sued is not present at his or her residence, place of business or workplace, the sheriff of the court can hand the court papers (eg, a summons) to another person on the premises. They however may only hand the papers to a person who appears to be 16 years or older.	Rules regulating the conduct of the proceedings of the several provincial and local divisions of the High Court of South Africa (i.e. the Uniform Rules of Court). Rule 4(1).
<b>Domicile of choice</b>	Age at which a person can acquire a domicile of choice.  Definition: 'Domicile' 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.  Children will be required to state their domicile when filling in contracts or when instituting legal proceedings.	<b>18</b>  <b>Under 18 with majority status:</b> Children under 18 who have attained majority status through marriage can acquire a domicile of choice on condition that they have the mental capacity to make that choice.  Note: Generally a child's domicile is with the parents or the parent with whom the child normally stays. However, children under 18 in foster care, in a child and youth care centre, or in other forms of custody are domiciled at the place with which he/she is most closely connected. That would be, for example, the child and youth care centre.	Domicile Act 3 of 1992. Section 1.

Area	Detail	Age	Source of law
<b>Leaving home</b>	<p>Age at which a person can leave home.</p> <p>This relates to the age at which a child can establish a domicile of choice. See the section on '<a href="#">domicile</a>'.</p>	<p><b>18</b></p> <p><b>Under 18 with majority status:</b> Children under 18 who have attained majority status through marriage can acquire a domicile of choice on condition that they have the mental capacity to make that choice.</p>	<p>Domicile Act 3 of 1992. Section 1.</p>
<b>Employment (general)</b>	<p>Age at which a child may be employed to perform work.</p>	<p><b>15</b></p> <p>No-one may employ a child under the age of 15 or under the minimum school-leaving age. In terms of the Schools Act, the minimum school-leaving age is the last school day of the year the child turns 15 or the age at the end of the ninth grade; whichever comes first.</p> <p>Regulations to the BCE Act govern the conditions under which <b>children aged 15 to 18</b> may be employed. The regulations define a 'child worker' as "any child who is employed by or works for an employer and who receives or is entitled to receive remuneration; or who works under the direction or supervision of an employer or any other person".</p> <p>These regulations prohibit or place conditions on the work that may be required, expected or permitted to be performed by a child worker:</p> <ul style="list-style-type: none"> <li>• A child worker may not be permitted or required to do any work that requires respiratory</li> </ul>	<p>Basic Conditions of Employment (BCE) Act 75 of 1997. Section 43.</p> <p>South African Schools Act 84 of 1996. Section 3.</p> <p>Department of Labour: Basic Conditions of Employment Act 75 of 1997: Regulations on hazardous work by children in South Africa. <i>Government Gazette</i> No 32862, Government Notice No 7, 15 January 2010.</p> <p>Department of Labour: Sectoral Determination 10: Children in the</p>

		<p>protection to be worn.</p> <ul style="list-style-type: none"> <li>• A child is only allowed to work in elevated positions (work at a height of more than 2 metres from the floor or ground) in certain circumstances.</li> <li>• A child worker can only be required or permitted to do work that requires lifting heavy weights in certain circumstances.</li> <li>• A child worker can only be required or permitted to work in cold, hot or noisy environments in certain circumstances.</li> <li>• A child worker may only be required or permitted to use power tools or cutting or grinding equipment in certain circumstances.</li> </ul> <p>If certain conditions are met a <b>child under 15</b> can be employed to perform labour for advertisements, sport or in an artistic or cultural event (Basic Conditions of Employment Act).</p>	<p>Performance of Advertising, Artistic and Cultural Activities, South Africa.  <i>Government Gazette</i> No 26608, Government Notice No 882, 29 July 2004 read with section 55(6)(b) of the Basic Conditions of Employment Act 75 of 1997.</p>
<b>Area</b>	<b>Detail</b>	<b>Age</b>	<b>Source of law</b>
<b>Working underground at a mine</b>	Age at which employees at mines can work underground in a mine.	<p><b>18</b></p> <p><b>Under 18 but over 16:</b>  May work underground as part of vocational education or training.</p>	<p>Mine Health and Safety Act 29 of 1996.  Section 85.</p>
<b>Defence force</b>	Age at which a person may serve in the National Defence Force (the regular force or the reserve force).	<b>18</b>	<p>Defence Act 42 of 2002.  Section 52  Department of Defence: Regulations for the Reserve Force.</p>

			<i>Government Gazette</i> No 32453, Government Notice No 799, 31 July 2009. Regulation 5(1)(c).
<b>Area</b>	<b>Detail</b>	<b>Age</b>	<b>Source of law</b>
<b>Police force</b>	Age at which a person may serve in the South African Police Force (the regular or the reserve force).	<b>18</b>	Department of Safety and Security. Regulations in terms of the South African Police Service Act 68 of 1995. Government Notice No 203, 14 February 1964. Regulation 11(1)(a)(iii). <i>Government Gazette</i> No 23245, Government Notice No 334, 22 March 2002. Regulation 3(1) (b).
<b>Fire brigade</b>	Age at which a child can be a reservist for the Fire Brigade Service.	<b>16, with permission from a parent or guardian</b>  Note: The regulations on Hazardous Work by Children in South Africa apply to a child who is a reservist for the fire brigade (since fire brigade work could be hazardous for child workers). See the section on <a href="#">‘general employment’</a> .	Regulations in terms of the Fire Brigade Service Act 99 of 1987: Fire Brigade Reserve Force. <i>Government Gazette</i> No 15431, Government Notice No 78, 21 January 1994. Regulation 3(c).

<b>Area</b>	<b>Detail</b>	<b>Age</b>	<b>Source of law</b>
<b>Debt collector</b>	Age at which a person can be employed as a debt collector.	<b>18</b>	Debt Collectors Act 114 of 1998. Section 10(1)(a)(iv).
<b>Credit provider or debt counsellor</b>	Age at which a person can be registered as a credit provider or debt counsellor.	<b>18</b>	National Credit Act 34 of 2005. Section 46(3)(a).
<b>Working in the liquor industry</b>	Age at which a child can be employed in the liquor industry in activities relating to the manufacturing or distribution of liquor .	<b>16</b>  The rule here is that a child under 16 cannot be employed in activities relating to the manufacturing or distribution of liquor unless it is for training purposes.  However no child under 18 is allowed to produce or import liquor or supply it to anyone.	Liquor Act 59 of 2003. Sections 8(1) and 10(6), read with section 1.
<b>Alcohol</b>	Age at which a person may be sold/supplied alcohol.	<b>18</b>  The law prohibits anyone from selling or supplying alcohol to a child.	The Liquor Act 59 of 2003. Section 10(1) read with section 1.
<b>Gambling</b>	Age at which a person may gamble.	<b>18</b>	National Gambling Act 7 of 2004. Section 12 read with section 1.
<b>Selling or supplying tobacco products to a child</b>	Age at which a person may be sold or supplied cigarettes or any other tobacco product.	<b>18</b>  The law prohibits anyone from selling or supplying tobacco products to a person under 18 years.	Tobacco Products Control Act 83 of 1993. Section 4.

Area	Detail	Age	Source of law
<b>Selling or supplying tobacco products at health facilities or at education institutions where children are being educated</b>	No-one can sell or offer to sell tobacco products in a health facility or in any place where a child (person under 18) receives education or training.	It is an offence to sell or offer to sell tobacco products at any place where a person <b>under the age of 18 years</b> receives education or training.  The offence carries a fine of up to R100 000.	Tobacco Products Control Act 83 of 1993. Section 4(4)(b) read with section 7(3).
<b>Smoking in the presence of young children</b>	Adults are prohibited from smoking in a car where a child under 12 is present.	It is an offence to smoke in a car where a child <b>under the age of 12</b> is present.  The offence carries a fine of R500.	Tobacco Products Control Act 83 of 1993. Section 2(1)(a)(iii) read with section 7(4).
<b>Firearms</b>	Age at which a person can apply for a firearm license and legally possess a firearm.	<b>21</b>  <b>Under 21</b> if compelling reasons exist.	Firearms Control Act 60 of 2000. Sections 9(2)(a) and 9(5)(a).
<b>Driving a car</b>	Age at which a person can legally drive a car.	<b>18</b>  (17 with learner's license provided a licensed driver is in the passenger seat at the time of driving.)	National Road Traffic Act 93 of 1996. Section 15.
<b>Driving a motorcycle or quad-bike</b>	Age at which a child can legally drive a motorcycle or quad-bike with an engine of 125 cubic centimetres.	<b>16</b>	National Road Traffic Act 93 of 1996. Section 15.



Area	Detail	Age	Source of law
<b>Registering as a voter</b>	The age at which a child can apply to be registered as a voter.	<b>16</b>  Note: The name of the successful applicant will only appear on the voters' roll once he/she turns 18.	Electoral Act 73 of 1998. Section 6.
<b>Voting</b>	The age at which a person can vote.	<b>18</b>	Electoral Act 73 of 1998. Section 1 (definition of voter).
<b>Identity document</b>	Age at which a child can apply for an identity document.	<b>16</b>	Identification Act 68 of 1997. Section 15.
<b>Passport</b>	Age at which a person can apply for a passport without parental consent.	<b>18</b>  <b>Child aged 16 to 17 years:</b> Can apply for a passport or travel document but will <b>need written parental consent</b> to be issued with the required documents. Both parents and all guardians (if they are more than one) must consent to the child's application for a passport. However if one parent has sole guardianship over the child then only that parent needs to consent to the application.  <b>Under 16:</b> A passport for a child under 16 can be obtained with the written consent of both parents and all guardians (if more than one) when the application is made. However if one parent has sole guardianship over the child then only that parent needs to consent to the application. Both parents and all guardians also have to sign the application form.	Children's Act 38 of 2005. Section 18(5) read with 18(3)(c)(iv).  Department of Home Affairs: Regulations to the South African Passport and Travel Documents Act 4 of 1994. <i>Government Gazette</i> No 17172, Government Notice No 784, 10 May 1996.  Regulation 2(6) read with regulations 3(3)(c) and (j).

		<p><b>Children who are under 18 but married or emancipated:</b> Can apply for a passport without parental consent.</p>	<p>South African Passport and Travel Documents Act 4 of 1994. Section 1: definition of minor.</p>
Area	Detail	Age	Source of law
<p><b>Change of forename or surname</b></p>	<p>Age at which a person can change his/her forename or surname without parental consent.</p>	<p><b>18</b></p> <p><b>For children under 18:</b> The parent or guardians (including a person who in law or in fact has custody or control of the child) of the child must apply for a change of his or her forename or surname. Children therefore generally cannot apply to change their forenames or surnames.</p> <p><b>Children under 18 who are married:</b> A child under 18 who has contracted a valid marriage is considered a major or 'person of age' and can apply for a change of his/her forename or surname by him/herself.</p>	<p>Births and Deaths Registration Act 51 of 1992. Sections 24 and 25 read with the definition of 'major' or 'person of age' in section 1.</p>

Area	Detail	Age	Source of law
<b>Alteration of sex description in birth register</b>	<p>Age at which a child can apply to Home Affairs to have his/her sex description changed on the birth register.</p> <p>Note: Once a change is made to the birth register, the birth certificate (and consequently identity document) can be changed as well.</p>	<p><b>Any person</b> whose sexual characteristics have been altered or has undergone gender reassignment (i.e. sex change) can apply to have the birth register changed.</p> <p>A person's sexual characteristics can be altered through surgery, medical treatment or evolvment through natural development which results in gender reassignment.</p> <p>Thus if a child's sex description has been altered either through medical treatment, surgical operation or through natural development, that child can apply to have the birth register changed.</p> <p>Note: A child can only undergo treatment or surgery to affect a sex change in accordance with the provisions for giving consent to medical treatment or surgery. See the sections on '<a href="#">medical treatment</a>' and '<a href="#">surgical operations</a>'.</p>	<p>Combination of legislation:</p> <p>Births and Deaths Registration Act 51 of 1992. Section 27A.</p> <p>Alteration of Sex Description and Sex Status Act 49 of 2003. Section 2.</p> <p>Children's Act 38 of 2005. Section 129.</p>
<b>Admission to school: Grade R (reception year)</b>	Age at which a child may be admitted to grade R in primary school.	<b>Age 4, turning 5</b> by end of June in the year of admission.	South African Schools Act 84 of 1996. Section 5(4)(a)(i).
<b>Admission to school: Grade 1</b>	Age at which a child may be admitted to grade 1 in primary school.	<b>Age 5, turning 6</b> by end of June in the year of admission.	South African Schools Act 84 of 1996. Section 5(4)(a)(ii).

Area	Detail	Age	Source of law
<b>Compulsory school starting age</b>	Age at which a child must be attending school.	<p><b>The year in which the child turns 7.</b></p> <p>A child must attend school from the first day of school in the year that the child will turn 7. The parents or any person who prevents the child from attending school will be guilty of an offence if they fail to ensure, without any good reason, that the child attends school. However parents can apply to have their children educated at home.</p> <p>Note: For the purpose of these provisions a ‘parent’ includes a guardian or a legal custodian of the child or someone who undertakes to fulfil the obligations of a parent, guardian or custodian in respect of the education of the child.</p>	South African Schools Act 84 of 1996. Sections 3(1) and 3(6)(a) read with section 51. Also see section 1 of the Act for the definition of ‘parent’.
<b>Leaving school</b>	The age at which compulsory school attendance, as required by law, ends.	<p><b>The last day of school in which the child turns 15 or the end of ninth grade, whichever comes first.</b></p> <p>A child must attend school until this age/grade or else the parents or any person who prevents the child from attending school will be guilty of an offence if they fail to ensure, without any good reason, that the child attends school.</p>	South African Schools Act 84 of 1996. Section 3(1) read with sub-section 6.
<b>Children capable of consenting to sex</b>	Age at which a child is considered by the law to be <b>capable</b> and mature enough to consent to sex.	<b>16</b>	Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007. See the definition of a child in relation to sections 15 and 16.

Area	Detail	Age	Source of law
<p><b>Children capable but not mature enough to consent to sex</b></p>	<p>Age at which a child is considered capable, but <b>not mature enough</b>, to consent to sex.</p>	<p><b>12 to 16</b></p> <p>According to the Criminal Law Amendment Act it is an offence for a person to have sex with or to sexually violate (non-penetrative sexual acts) a child who is between 12 and 16 years, even with that child's consent.</p> <p>It is however a defence to such a charge if the accused was deceived by the child into believing that the child was above 16.</p> <p>If two children between 12 and 16 years engage in penetrative sex with each other, they may both be charged under the Act with 'statutory rape'. However, to prevent unnecessary prosecutions of children, the decision to prosecute the children must be authorised by the National Director of Public Prosecutions.</p> <p>If two children between 12 and 16 years engage in non-penetrative sexual acts with each other, they must both be charged under the Act with 'statutory sexual violation'. However, to prevent unnecessary prosecutions of children, the decision to prosecute the children must be authorised by the relevant provincial Director of Public Prosecutions. In addition, it is a defence to argue that both the accused were children with an age difference of not more than two years between them at the time of the offence.</p>	<p>Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007. Sections 15 and 16 read with the definition of a child in relation to these sections and section 56(2).</p>

Area	Detail	Age	Source of law
<b>Children incapable of consenting to sex</b>	Age at which a child is considered by the law to be <b>incapable</b> of consenting to sex.	<p><b>Below 12:</b> Any person having sex (penetrative or non-penetrative) with a child under this age is committing the crime of rape or sexual violation.</p> <p>Note: The defences which can be raised in the case of 'statutory rape' (see previous page) cannot be used in the case of sex with a child under 12. However, if the accused is a child below the age of 10 years, the child cannot be prosecuted (see the section on '<a href="#">criminal capacity</a>'). If the accused is a child between the ages of 10 and 14, the child can be prosecuted but the prosecution bears an onus to prove that the child did have criminal capacity.</p>	Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007. Section 57 read with sections 1(2) and 1(3)(d)(iv).
<b>Civil law marriage</b>	Age at which a child may enter into marriage in terms of civil law.	<p><b>Boys and girls: 18</b> – without parental consent.</p> <p><b>Girls: 15 to 17</b> – with consent of the girl and her parents.</p> <p><b>Girls: 12 to 14</b> – with the consent of the girl, her parents AND the Minister of Home Affairs.</p> <p><b>Boys: 14 to 17</b> – with the consent of the boy, his parents AND the Minister of Home Affairs.</p> <p>Note: The minimum age for a valid marriage is set out in terms of common law. Common law dictates that a child cannot get married below the age of puberty, i.e. below 12 years for girls and below 14 years for boys.</p>	<p>Marriage Act 25 of 1961. Section 26(1) read with sections 17 and 18(3)(c)(i) of the Children's Act 38 of 2005.</p> <p>See also section 12(2) of the Children's Act, read with the common law.</p>

		<p>The Children's Act prohibits the arrangement of marriages or engagements for children below the minimum age for a valid marriage (i.e. below 12 years for girls and below 14 years for boys.)</p> <p>Furthermore, the Children's Act clarifies that a parent cannot arrange a marriage or engagement of a child without the child's consent.</p>	
<b>Area</b>	<b>Detail</b>	<b>Age</b>	<b>Source of law</b>
<b>Customary law marriage</b>	Age at which a child may enter into a marriage in terms of customary law.	<p><b>18</b> (without parental consent)</p> <p><b>Boys aged 14 to 17:</b> With the consent of the boy, the parents AND the permission of the Minister of Home Affairs or an officer in the public service authorised by the minister to give permission for the marriage.</p> <p><b>Girls aged 12 to 17:</b> With the consent of the girl, the parents AND the permission of the Minister of Home Affairs or an officer in the public service authorised by the minister to give permission for the marriage.</p> <p>Note: In terms of common law, a child cannot get married below the age of puberty (below 12 years for girls and 14 years for boys).</p> <p>The Children's Act now prohibits the arrangement of marriages or engagements for children below the minimum age for a valid marriage (i.e. 12 years for girls and 14 years for boys.) Furthermore, the Act requires</p>	<p>Recognition of Customary Marriages Act 120 of 1998. Section 3.</p> <p>See also section 12(2) of the Children's Act, read with the common law.</p>

Area	Detail	Age	Source of law
<b>Civil union</b>	Age at which a person can enter into a civil union.	<p><b>18</b></p> <p>No express provision is made for persons below 18 to enter into a civil union either with or without parental consent. However on the grounds of equality, it is likely that the same provisions that apply to civil or customary marriages could also apply to civil unions.</p>	<p>Civil Union Act 17 of 2006. Section 1, defining a civil union.</p>
<b>Surgical operations</b>	Age at which a child may consent to surgical operations on him/herself (and consent to such operations on his/her own child).	<p><b>12</b></p> <p><b>The child must also be of sufficient maturity and mental capacity</b> to understand the benefits, risks and social implications of the operation <b>AND the child must be duly assisted by his/her parent or guardian.</b></p> <p>If the child is <b>under 12 or over 12 but insufficiently mature to consent</b>, the parent or guardian must consent on the child's behalf. Before the parent or guardian consents to surgery on behalf of the child, the views of the child must be considered, depending on the age and stage of development of the child.</p>	<p>Children's Act 38 of 2005. Section 129(3) and section 129(5) read with section 31.</p>



Area	Detail	Age	Source of law
<b>Medical treatment</b>	Age at which a child may consent to his/her own medical treatment (and consent to medical treatment for his/her own child).	<b>12</b>  <b>The child must also be sufficiently mature and have the mental capacity</b> to understand the benefits, risks and social implications of the treatment.  <b>For children under 12 or children over 12 but insufficiently mature to consent</b> , the parent or guardian or caregiver must consent on the child's behalf. Before the parent or guardian consents to medical treatment on behalf of the child, the views of the child must be considered, depending on the age and stage of development of the child.	Children's Act 38 of 2005. Section 129(2) and section 129(4) read with section 31.
<b>Refusing medical treatment or surgical operations</b>	Age at which a child can refuse medical treatment or surgical operations.	<b>Children's rights to refuse health care can be deduced from:</b> <ul style="list-style-type: none"> <li>• The Children's Act does not explicitly grant children the right to refuse treatment or surgery; however, it does acknowledge such a right by noting that the Minister of Social Development can consent to medical treatment or surgery of the child if the child unreasonably refuses to give consent. This therefore implies that the child's refusal must be respected, if his/her refusal is not unreasonable,</li> <li>• The National Health Act 61 of 2003 also obliges health practitioners to inform health users (including child patients with the capacity to consent) about their right to refuse treatment.</li> <li>• The right to refuse treatment also stems from children's constitutional right to bodily integrity in</li> </ul>	Children's Act 38 of 2005. Section 129(2)(3) and (8).  National Health Act 61 of 2003. Section 6(1)(d) read with the definition of a 'user' in section 1.  Constitution of the Republic of South Africa Act 108 of 1996. Section 12(2).

		<p>section 12 of the Bill of Rights.</p> <p>From this it can be concluded that children do have a right to refuse treatment and surgery.</p> <p>The general rule here would be that only a child that has attained the relevant age of consent (12 and older) and who is mature enough to understand the risks and consequences of refusing can validly exercise a right to refuse health care.</p>	
<b>Area</b>	<b>Detail</b>	<b>Age</b>	<b>Source of law</b>
<b>Sterilisation</b>	Age at which a person can consent to being sterilised.	<p><b>A person who is 18 and capable of consenting can be sterilised without the need for parental consent.</b></p> <p>Note: A person who is 18 or older but not capable of consenting due to mental illness can be sterilised with the consent of a parent, spouse, guardian or curator.</p> <p><b>Under 18:</b></p> <p>Note: Sterilisation may not be preformed on a person under 18 years unless failure to do so would jeopardise the child's life or seriously impair his or her health.</p> <p>A child under 18 who falls in the above category (i.e. non-sterilisation will be detrimental to his/her health) may be sterilised if consent is given by parents/guardian or any other person lawfully entitled to give consent for the sterilisation AND an independent medical practitioner has consulted with the child to be sterilised and has provided a written</p>	<p>Sterilisation Act 44 of 1998. Sections 2 and 3.</p>

		<p>opinion to the effect that the sterilisation is in the best interest of that child.</p> <p>Note: Section 129 of the Children’s Act is applicable – i.e. if the child is aged 12 and sufficiently mature, etc. The child’s consent is also required before a sterilisation can be performed on the child.</p>	
Area	Detail	Age	Source of law
<b>Terminating a pregnancy</b>	Age at which a child may terminate her pregnancy.	<p><b>Any age</b></p> <p>The Choice on Termination of Pregnancy (CTOP) Act defines a woman as: ‘any female person of any age’. It further states that only the woman’s consent is needed for the termination of pregnancy (TOP) and in the case of a minor, only the minor’s consent is needed subject to <b>advising such a minor to consult with the parents.</b></p> <p>The CTOP Act makes it clear that :</p> <p>“Notwithstanding <b>any other law</b> or the common law... no consent other than that of the pregnant woman (i.e. female person <b>of any age</b>) shall be required for the termination of a pregnancy.” [Emphasis added]</p> <p>This means that the age limits for medical treatment or surgery without parental assistance (as set out in the Children’s Act) do not apply to a girl requiring a TOP by either means (i.e. medically or surgically). Thus the Children’s Act does not change the provisions in the CTOP Act when it comes to the ages of consent for girls requiring a TOP. This position is confirmed by the</p>	<p>Choice on Termination of Pregnancy Act 92 of 1996. Sections 1, 5(2) and 5(3).</p> <p>Read with section 129(1) of the Children’s Act 38 of 2005.</p> <p>See also: <i>Christian Lawyers Association v Minister of Health and Others (Reproductive Health Alliance as Amicus Curiae)</i> 2005 (1) SA 509 (T) at p. 516.</p>

		<p>Children's Act in section 129(1), which says that section 129 is "subject to section 5(2) of the Choice on Termination of Pregnancy Act".</p> <p>Thus, even if the child is 10, she would not need parental consent in order to terminate her pregnancy.</p> <p>However, in the <i>Christian Lawyers case</i>, where these provisions of the CTOP were challenged the court, it was found that the requirement of informed consent was central to obtaining TOP services, and that the Act did not allow any termination of pregnancy to take place where the woman was unable to give informed consent, despite her age.</p>	
Area	Detail	Age	Source of law
<b>Condoms</b>	Age at which a child may be sold or provided with condoms.	<p><b>12</b></p> <p>A person may not refuse to sell or provide condoms to a child over 12.</p>	Children's Act 38 of 2005. Section 134(1).
<b>Contraceptives other than condoms</b>	Age at which a child may be provided with contraceptives other than condoms.	<p><b>12</b>, with the additional requirement that <b>proper medical advice must be given</b> to the child and a <b>medical examination</b> must be performed.</p>	Children's Act 38 of 2005. Section 134(2).

Area	Detail	Age	Source of law
<b>HIV testing</b>	Age at which a child can consent to an HIV test.	<b>12</b>  <b>Under 12:</b> If the child is <b>mature enough</b> to understand the benefits, risks and social implications of the test.  <b>For children under 12 who are not mature enough to consent:</b> Parental or caregiver consent is needed.	Children's Act 38 of 2005. Section 130
<b>Disclosing HIV status</b>	Age at which a child can consent to disclosure of his/her HIV positive status.	<b>12</b>  <b>Under 12 if child is mature enough</b> to understand the benefits, risks and social implications of such disclosure.  <b>Under 12 and not mature enough:</b> Parent or caregiver consent is needed.  Note: Testing can only be done after the child has received counselling.	Children's Act 38 of 2005. Section 133 read with section 132.

Area	Detail	Age	Source of law
<b>Vaccinations/ immunisation</b>	Age at which a child can consent to his/her own vaccination.	<p>Vaccinations are regarded as medical treatment so the age threshold for medical treatment applies to children requesting or requiring vaccinations without parental consent.</p> <p><b>12</b>  <b>The child must also be sufficiently mature and have the mental capacity</b> to understand the benefits, risks and social implications of the treatment.</p> <p><b>For children under 12 or children over 12 but insufficiently mature to consent:</b>  Parent or guardian or caregiver must consent on the child's behalf.</p> <p><i>Note: Amendments to the Medicines and Related Substances Act 101 of 1965. The 1965 Act has been amended by the Medicines and Related Substances Amendment Act 72 of 2008. The Amendment Act have changed the age at which a child can be supplied with Schedule 2 substances (which includes vaccinations) to age 12 to correspond with the age-threshold for medical treatment as set out in the Children's Act</i></p>	<p>Children's Act 38 of 2005.  Section 129.</p> <p>Communications with the legal unit of the Department of Health. April 2011.</p> <p>See also: Amendment of section 22A(4)(b) and 22A(6)(e) of the Medicines and Related Substances Act 101 of 1964. These provisions are to be amended by section 22 of the Medicines and Related Substances Amendment Act 72 of 2008.</p> <p><i>Note: At the time of publication, the 2008 Act has been passed by Parliament and signed by the President, but was not yet in operation.</i></p>

<b>Area</b>	<b>Detail</b>	<b>Age</b>	<b>Source of law</b>
<b>Donation of bodily organs (after death)</b>	Age at which a child can agree to donate his/her body or any specific tissue in the event of his/her death.	<b>16</b>	Human Tissue Act 65 of 1983. Section 2 read with section 4 of the Wills Act 7 of 1953.
<b>Donation of non-replaceable organs by a living person</b>	Age at which a person can consent to donate his/her organs (e.g. kidneys) while alive.	<b>18</b>  Human tissue which is not replaceable by natural process (like kidneys) cannot be removed for donation from a person younger than 18.  However the Minister of Health can authorise the removal of such tissue and may impose conditions in respect of such removal.	Human Tissue Act 65 of 1983. Section 18 read with the definition of 'competent witness' in section 1. See also section 19(ii).  The National Health Act 61 of 2003. Section 56(2).  Section 129 of the Children's Act 38 of 2005.
<b>Donating blood (or replaceable tissue)</b>	Age at which a child can consent to donating his /her blood or replaceable tissue.	<b>14</b>  Human tissue that is replaceable by natural processes (e.g. skin and blood) can be removed for donation with the consent of the child if the child is aged 14 or older. Note: If surgery is involved, section 129 of the Children's Act will apply, which requires the child to also be sufficiently mature to consent and to be assisted by their parent or guardian in making the decision.	Human Tissue Act 65 of 1983. Section 18(aa) read with definition of a 'competent witness'.

Area	Detail	Age	Source of law
<b>Circumcision</b>	Age at which a male child can consent to being circumcised.	<p><b>16</b></p> <p>Note: Circumcision of a child 16 years or older can only be done if the child consented to the circumcision.</p> <p><b>Under 16:</b> A boy under 16 can only be circumcised for religious purposes or medical reasons.</p> <p>Either both parents, or all guardians (if there's more than one), have to consent to religious circumcision of a child under 16.</p> <p>A medical circumcision is regarded as a surgical procedure and the age of consent for that is 12. The parent must assist the child to consent.</p> <p>Note: The Act indicates that every male child has a right to refuse to be circumcised depending on his age, maturity and stage of development.</p>	<p>Children's Act 38 of 2005. Sections 12(8), (9) and (10).</p> <p>Department of Social Development. The Children's Act: General Regulations regarding children: <i>Government Gazette</i> No 33076, Government Notice No 261, 1 April 2010. Regulation 6(3).</p>
<b>Virginity testing</b>	Age at which a child can consent to a virginity test.	<p><b>16</b></p> <p>Note: Virginity testing for a child 16 years or older can only be done if the child consented to the testing.</p> <p>Virginity testing below this age is prohibited.</p>	<p>Children's Act 38 of 2005. Section 12(4) and (5).</p>
<b>Housing subsidies</b>	Age at which a person can apply for a housing subsidy.	<p><b>18</b></p> <p>Children who are <b>under 18</b> and competent to contract (i.e. married or divorced and of sound mind) can also</p>	<p>The National Housing Code 2009: Part 3. Technical and General Guidelines (see, for</p>



		apply for a housing subsidy.	example, p. 12). Read with the Children's Act 38 of 2005, section 17.  <i>Note: Policy is currently being developed to enable children in child-headed households to qualify for housing subsidies. This will take the form of a type of institutional subsidy.</i>
<b>Area</b>	<b>Detail</b>	<b>Age</b>	<b>Source of law</b>
<b>Criminal capacity</b>	Age at which a child can be tried and convicted for a criminal act.	<p><b>Under 10:</b> The child lacks criminal capacity and cannot be prosecuted. Instead of a criminal prosecution, the child must be referred to a probation officer and a decision must be made on what action to take (including a decision not to take any action at all). Support services could be arranged for the child or the matter could be transferred to the Children's Court for an inquiry.</p> <p><b>Between the ages of 10 and 14:</b> The child can be tried and convicted but there is a rebuttable presumption that he/she did not appreciate the difference between right and wrong and did not act in accordance with that appreciation. The prosecution bears an onus of rebutting these presumptions.</p>	<p>Child Justice Act 75 of 2008. Sections 7, 8, 9, 10 and 11.</p> <p><i>Note: The age of criminal capacity must be reviewed after five years following the commencement of the Child Justice Act (1 April 2010) and could be raised during this review.</i></p>

Area	Detail	Age	Source of law
<p><b>Detaining unconvicted child offenders</b></p>	<p>Different detention procedures apply to young offenders of different ages</p>	<p><b>Aged 14 years and older:</b> The child is considered to have criminal capacity and he/she can be tried and prosecuted.</p> <p>Children <b>below 14</b> cannot be detained in prison.</p> <p>A child <b>aged 10 to 14</b> years charged with any offence or a child <b>aged 14 or older</b> charged with certain less serious offences (set out in Schedule 1 or 2 of the Act) <b>may</b> be detained in a child and youth care centre before the first court appearance or, if a centre is not available or has no vacancy, in a police cell or lock-up.</p> <p>If a child <b>aged 14 or older</b> is charged with a serious offence like murder or rape (as set out in Schedule 3 of the Act) the child <b>must</b> be detained in a police cell or lock-up.</p> <p>A child <b>above 14</b> can only be detained in a prison if charged with a Schedule 3 offence and, in the case of a child <b>between 14 and 16</b>, he/she can only be detained if the Director of Public Prosecutions or an authorised proxy confirmed the availability of sufficient evidence to institute a prosecution of a Schedule 3 offence against the child.</p> <p>Furthermore, a child <b>above 14</b> charged with Schedule 1 or 2 offences can only be detained in a prison if <i>inter alia</i> substantial and compelling reasons exist to order the child's detention in a prison.</p>	<p>Child Justice Act 75 of 2008. Sections 27 and 30.</p>

Area	Detail	Age	Source of law
<p><b>Sentencing children</b></p>	<p>The law prescribes particular rules regarding sentencing children of certain ages.</p>	<p>A child who is <b>under 14</b> at the time of sentencing may not be sentenced to imprisonment.</p> <p>An obligation to provide some service or benefit to a specified person; community or organisation (as a form of punishment) may only be imposed on a child who is <b>15 years or older</b>.</p> <p>A child who is <b>14 or 15</b> at the time of sentencing may only be sentenced to imprisonment if the child was convicted of ;</p> <ul style="list-style-type: none"> <li>• a Schedule 3 offence like murder <b>or</b></li> <li>• a Schedule 1 or 2 offence, like assault or theft <b>and</b> it was found (in the case of a Schedule 1 or 2 offence) that substantial and compelling reasons exist to impose a sentence of imprisonment.</li> </ul> <p>A child who is 14 or 15 and sentenced to imprisonment may not be sentenced to more than 25 years in prison.</p> <p>In the case of the <i>Centre for Child Law v Minister for Justice and Constitutional Development and Others</i>, the Constitutional Court declared various parts of section 51 of the Criminal Law Amendment Act unconstitutional. As a result of the judgment prescribed minimum sentences may not be applied to any child who was under the age of 18 at the time the offence was committed and children cannot be sentenced to life imprisonment.</p>	<p>Criminal Law Amendment Act 105 of 1997.</p> <p>Section 51(1)(2) as amended by the Constitutional Court judgment (<i>Centre for Child Law v Minister for Justice and Constitutional Development and Others (NICRO as Amicus Curiae)</i> 2009 (11) BCLR 1105 (CC)).</p> <p>Child Justice Act 75 of 2008.</p> <p>Sections 74(2)(c), 77(1)(a) and section 77(3).</p>

Area	Detail	Age	Source of law
<b>Accommodation of child prisoners</b>	Ages at which prisoners should be detained separately.	<p>Child prisoners (<b>under 18</b>) must be detained separately from adult prisoners (above 18 years).</p> <p>Prisoners aged 18 to 21 years should be detained separately from prisoners over 21.</p>	<p>Correctional Services Act 111 of 1998. Section 7(2)(c) read with the Correctional Services Regulations: <i>Government Gazette</i> No 26626, Government Notice No 914 , 30 July 2004. Regulation 3(2)(h).</p> <p>The Constitution of the Republic of South Africa Act 108 of 1996. Section 28(1)(g)(i).</p>
<b>Appeals against court orders</b>	Appeal procedures for child appellants in criminal matters.	<p>Generally a child appellant has to first note an appeal by applying for leave to appeal. However the appeal can be automatically noted without the need to first apply for leave to appeal if the child appellant was:</p> <ul style="list-style-type: none"> <li>• <b>below 16 years</b> at the time of the offence; or</li> <li>• was <b>aged 16 to 17</b> at the time of the offence; <b>and</b></li> <li>• was given an unsuspended sentence to a form of imprisonment.</li> </ul> <p>The appeal can be automatically noted against a lower court order or a High Court order.</p>	Child Justice Act 75 of 2008. Section 84 read with section 309(b)(1) of the Criminal Procedure Act 51 of 1977.

Area	Detail	Age	Source of Law
<b>Child support grant (CSG): child age limits</b>	Age limits for children to be eligible for the CSG.	Children under the age of 18 years and who were born on or after 31 December 1993 are eligible.	Department of Social Development: Social Assistance Act 13 of 2004: <i>Regulations relating to the application for and payment of social assistance and the requirement or conditions in respect of eligibility for social assistance</i> . See Regulation 6 of <i>Government Gazette</i> No 31356, Government Notice No 898, 22 August 2008 (as amended in 2009 and 2010 respectively).
<b>Child support grant : caregiver age limits</b>	Age at which a child can access a CSG in his/her own name for his/her own child or younger siblings.	<b>16</b>  The Social Assistance Act 13 of 2004 defines a 'primary caregiver' as a person 16 years or older.	Social Assistance Act 13 of 2004.  Section 6 read with section 1 (definition of 'primary caregiver').

Area	Detail	Age	Source of Law
<b>Care dependency grant (CDG): child age limits</b>	Age of a child with a disability for which a caregiver or parent can access a CDG.	<b>0 to 18 years</b>	Social Assistance Act 13 of 2004. Section 1 (definition of a 'child') and Regulations to the Act: <i>Government Gazette</i> No 31356, Government Notice No 898, 22 August 2008. Regulations 8 and 28(4)(a)(ii).
<b>Care dependency grant: caregiver age limits</b>	Age at which a child can access a CDG in his/her own name for his/her own child or younger siblings.	<b>16</b> if the child is the primary caregiver (or parent) of a care-dependent child.  While the Social Assistance Act stipulates an age limit of 16 for 'primary caregivers', it does not give age limits for 'parents' who are also listed as being eligible for applying for the grant. A 15-year-old mother (parent) of a disabled child therefore theoretically could apply for a CDG for her child.	Social Assistance Act 13 of 2004. Section 7 read with section 1 (definition of 'primary caregiver').
<b>Adult disability grant</b>	Age at which a person can access a disability grant for him/herself.	<b>18</b>	Social Assistance Act 13 of 2004. Section 9 read with the regulations to the Act: <i>Government Gazette</i> No 31356, Government Notice No 898, 22 August 2008. Regulation 3.

Area	Detail	Age	Source of law
<b>Foster child grant (FCG): child age limit</b>	Ages of children for which a foster parent can access a FCG.	<p><b>From birth, until the end of the year in which the child turns 18 years.</b></p> <p><b>18, until the end of the year in which the child turns 21 years:</b></p> <p>If an extension is needed to enable the child to complete his/her education or training. The provincial Head of Social Development must give approval. The foster parent must be willing to continue the foster role and an application needs to be made by the young person in foster care, to the provincial Head of Social Development.</p> <p>Note: A FCG can also lapse a month after the foster child leaves school (which could be the end of the year in which the foster child turns 15, or at the end of the ninth grade, or even sooner if the child did not leave school in accordance with the provisions of the South African Schools Act ).</p> <p>A social worker may recommend that the South African Social Security Agency authorises continued payment of the grant for 12 months pending the child's placement.</p> <p>(It is not clear what is meant by 'pending placement' as it cannot be assumed that the child's placement has lapsed simply because they are not in school.)</p>	<p>Social Assistance Act 13 of 2004. Section 8 read with the definition of a 'child'.</p> <p>Children's Act 38 of 2005. Sections 167(1)(a) and 176.</p> <p>Regulation 63 of the Children's Act read with regulations 28(3)(d) and (e) of the Social Assistance Act 13 of 2004. <i>Government Gazette</i> No 31356, Government Notice No 898, 22 August 2008.</p>

Area	Detail	Age	Source of law
<b>Foster child grant: foster parent's age limit</b>	<p>Age at which a child can access a FCG in his/her own name for siblings or other children in his/her care.</p>	<p><b>18, according to current practice and guidelines from the Department of Social Development (DSD).</b></p> <p>A foster parent is any person (except a parent/guardian) in whose custody a child has been placed in terms of the Children's Act.</p> <p>The Children's Court decides when a person can be a foster parent. There is no age specified in the sections of the Children's Act which sets criteria to guide the Court on who can become a foster parent.</p> <p>However, it is generally accepted in practice that a person should be at least 18 years or older (in line with the age of majority) to be given the responsibility of becoming a foster parent. Furthermore, according to the DSD guidelines on foster care, one of the criteria used to recruit foster parents is that such parents must be 18 years or older.</p> <p>Once a foster care order is made, the foster parent can apply for a foster child grant.</p> <p>If an 18-year-old is taking care of for example a 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-year-old child a 'child in need of care' in terms of the Children's 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 remains in the</p>	<p>Social Assistance Act 13 of 2004. Section 8 read with regulation 7. <i>Government Gazette</i> No 31356, Government Notice No 898, 22 August 2008. Read with the Children's Act 38 of 2005, section 182.</p> <p>Other sources: Department of Social Development (2010): <i>Guidelines for the effective management of foster care in South Africa</i>, p. 23.</p> <p>This document is available from the provincial DSD offices.</p>



		custody of the person in whose custody he/she was before the commencement of the proceedings (e.g. the 18-year-old), under the supervision of the social worker.	
<b>Area</b>	<b>Detail</b>	<b>Age</b>	<b>Source of law</b>
<b>Children in alternative care</b>	The duration of an alternative care order made by the Children's Court.	<p>An alternative care order lapses after two years, or within a shorter period if ordered as such by the court. The Children's Court may extend the order for two years at a time until the child has turned 18.</p> <p>A child is entitled to remain in alternative care until the end of the year of which the child turns 18.</p> <p>An application can be made to extend the person's stay in alternative care until the end of the year when he/she reached the age of 21 if the extension is needed to enable him/her to complete education or training and if the alternative caregiver is able to care for him/her and has agreed to the extension.</p> <p>The provincial Head of Social Development may discharge a child from alternative care after the best interest of the child has been assessed, and to enable family reunification.</p> <p>A court can also order that a child placed in foster care can remain there until the age of 18 without the need for continuous two-yearly court extensions.</p> <p>After an alternative care order has lapsed, a child is not compelled to remain in alternative care unless the</p>	<p>Children's Act 38 of 2005. Sections 159(1) and (3), 175, 176 and 186.</p> <p>See also: Regulation 63 of the Children's Act read with regulation 28(3)(d) of the Social Assistance Act 13 of 2004. <i>Government Gazette</i> No 31356, Government Notice No 898, 22 August 2008.</p>

		court extends the order again. Thus, even if the order expired before the child turned 18 and no extension has been issued, the child does not have to remain in alternative care.	
<b>Area</b>	<b>Detail</b>	<b>Age</b>	<b>Source of law</b>
<b>Child-headed household</b>	Age at which a child can be considered head of a household and bear rights and responsibilities as a caregiver.	<b>16</b>	Children's Act 38 of 2005. Section 137(1)(c) read with the definition of 'caregiver' in section 1.
<b>Adopting a child</b>	Age at which a person can adopt a child	<b>18</b>	Children's Act 38 of 2005. Section 231(2) (c).
<b>Own adoption</b>	Age at which a child can consent to his/her own adoption.	At <b>10</b> a child can consent to his/her own adoption  Note: Both the biological parents' consent are also required with certain exceptions, for example if the parent is untraceable or has abandoned the child.  <b>Under 10:</b> A child can consent to his/her own adoption, if the child is mature and developed enough to understand the implication of such consent.	Children's Act 38 of 2005. Section 233(1)(c).
<b>Adoption of a child's own child</b>	Age at which a person can consent to the adoption of his/her child.	<b>18 years and older:</b> A person can consent to the adoption of his/her own child without assistance of his/her parent or guardian.  <b>Under 18:</b> A child who is a parent can consent to the adoption of his/her own child <b>provided that the child parent is assisted by his/her guardian.</b>	Children's Act 38 of 2005. Section 233 (1)(a).

## **Acknowledgements**

Thank you to Carina du Toit, Karabo Ngidi and Adv Ann Skelton (all from the Centre for Child Law, University of Pretoria), Katharine Hall and Dr Tendai Nhenga-Chakarisa (both from the Children's Institute, University of Cape Town), Sello Ramasala (Legal Service Unit: Department of Health), Prof Julia Sloth-Nielsen (Law Faculty: University of the Western Cape) and Adv Ronel van Zyl (South African Law Reform Commission) for reviewing the guide for accuracy.

Thank you to Charmaine Smith (Children's Institute, University of Cape Town) for editing and formatting the guide for publication.

## **Disclaimer**

Every attempt was made to ensure that the information on these pages is current and accurate. Neither the Children's Institute, University of Cape Town, its Faculty of Health Sciences, staff, agents, nor any other person shall be liable to whomsoever may have sustained any loss of any kind as a result of having relied to his/her detriment upon any information contained in any of these pages.

## **Citation suggestion**

Mahery P & Proudlock P (2011) *Legal guide to age thresholds for children and young people*. Edition 5, April 2011. Cape Town: Children's Institute, University of Cape Town.

**ISBN:** 978-0-7992-2477-1

## **Contact details**

Children's Institute, University of Cape Town  
46 Sawkins Road  
Rondebosch  
7700  
Cape Town  
Tel: +27 21 689 5404/Fax: + 27 21 689 8330  
Web: [www.ci.org.za](http://www.ci.org.za)