

The Law Commission

(LAW COM. No. 134)

LAW OF CONTRACT MINORS' CONTRACTS

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The Law Commission was set up by section 1 of the Law Commissions Act 1965 for the purpose for promoting the reform of the law.

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* As from 1 May 1984.

MINORS' CONTRACTS

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MINORS' CONTRACTS

Summary

In this report the Law Commission examines the law relating to minors' contracts. It concludes that legislation should be confined to the relatively few aspects of the existing law which are likely, in practice, to cause difficulties or to lead to injustices. It recommends that the Infants Relief Act 1874 be repealed, that minors' contracts should be capable of effective ratification, that guarantees of minors' contracts should be validated and that in some circumstances the supplier of goods to a minor should in the event of non-payment be entitled to recover them or the proceeds of their sale by the minor. The report contains a draft Minors' Contracts Bill which would give effect to these recommendations.

THE LAW COMMISSION

LAW OF CONTRACT

Item I of the First Programme

MINORS' CONTRACTS

To the Right Honourable the Lord Hailsham of St. Marylebone, C.H., Lord High Chancellor of Great Britain

PART I

INTRODUCTION

Our Working Paper

1.1 In March 1982 we published a Working Paper¹ (which we refer to hereafter as "the Working Paper"), setting out the existing law on minors' contracts and putting forward suggestions for its amendment and clarification. Our decision to publish this Working Paper stemmed from our earlier decision, recorded in our Eighth Annual Report,² to suspend work on the contract code projected in our First Programme³ and to deal separately with particular aspects of the law of contract in respect of which reform might be needed. It appeared to us that the law governing minors' contracts was in need of reform.

1.2 An additional factor leading to our decision to tackle this subject was the Report of the Committee on the Age of Majority (the Latey Committee), which had been published in 1967.⁴ The principal recommendation of the Latey Committee (implemented in the Family Law Reform Act 1969⁵) was the reduction of the age of majority from 21 to 18. But this Committee also considered, among other matters, the subjects with which our Working Paper and this report are concerned. They suggested that their own proposals (discussed in Part IV of our Working Paper⁶) should be considered by us as a basis for reform in the context of our projected contract code, referred to above. They found, as we have found, the existing law to be in some respects unsatisfactory. Although our own recommendations differ in some ways from their suggestions (which were of a general nature and not intended to constitute detailed legislative proposals), we found their report most helpful.

1.3 The Working Paper contained a full statement of the present law and its defects and detailed discussion of the field of choice for reform in this area of the law. This report, on the other hand, is short and at many points

¹ *Minors' Contracts* (1982) Working Paper No. 81.

² *Eighth Annual Report 1972-1973* (1973) Law Com. No. 58, paras. 3-5.

³ *First Programme* (1965) Law Com. No. 1, Item I.

⁴ *Report of the Committee on the Age of Majority* (1967) Cmnd. 3342.

⁵ Section 1(1).

⁶ See paras. 4.1-4.15.

refers to passages in the Working Paper where a much fuller treatment is to be found. The reason for this brevity lies in the limited nature of the changes which we recommend on this topic. The draft Bill, however, contained in Appendix A is accompanied by detailed Explanatory Notes.

The Existing Law

(a) General

1.4 In Part II of the Working Paper⁷ we set out the existing law governing minors' contracts. Here we shall summarise the main features of that statement.⁸

1.5 The basic principle of the common law (which still constitutes most, but not all, of the rules governing minors' contracts) is that a minor's contract is enforceable by, but not against, him.⁹ The *rationale* of this principle is that an inexperienced young person requires protection against both the rapacity of some unscrupulous and more experienced adults and his own imprudence. This basic principle is, as it must be, subject to exceptions. Of these, the most important are:—

- (i) contracts for "necessaries";
- (ii) contracts of employment;
- (iii) contracts involving certain lasting property rights or obligations.

A common feature of these contracts is that they are likely to be of benefit to the minor.

(i) Contracts for Necessaries

1.6 In very general terms,¹⁰ the rule of law relating to necessaries is that a minor who agrees to pay for goods (or services) which are *necessary* for him (in the sense of their being suitable to his station in life and to his actual requirements) is legally liable to honour his obligation¹¹ but if the goods (or services) are not "necessaries", he cannot be compelled to pay.

(ii) Contracts of Employment

1.7 The common law has always recognised the obvious fact that it may be, and usually is, advantageous for a minor, old enough to earn money, to be able to enter into an effective contract for that purpose. Accordingly, the rule is that a contract of employment (including apprenticeship), if it is as a whole beneficial to the minor, binds him.¹² This rule appears to extend to contracts analogous to contracts of employment, such as contracts entailing the performance by the minor of a service which is dependent on the exercise by him of some special skill or knowledge.

⁷ See paras. 2.1–2.25.

⁸ There have been no further developments in this area of the law since the Working Paper was published.

⁹ The minor may not, however, enforce the contract by means of a decree of specific performance. The remedy against the defaulting adult will therefore in most cases lie only in damages.

¹⁰ It is fully explained in paras. 2.3–2.7 of the Working Paper.

¹¹ Sale of Goods Act 1979, s. 3, provides that a minor should have to pay only a reasonable price (which may not be the contract price) for necessary goods.

¹² It is fully explained in paras. 2.8–2.9 of the Working Paper.

(iii) *Property Contracts*

1.8 There are four categories of contract which provide exceptions to the basic principle of unenforceability against a minor, in that they are binding on a minor party unless and until repudiated by him during his minority or shortly after his having attained his majority. The categories in question are:—

- (a) contracts for the acquisition (or sale) of an interest in land, or for the taking (or granting) of a lease of land;
- (b) marriage settlements;
- (c) agreements to pay a call on shares;
- (d) partnership.

All these contracts involve the acquisition of a lasting interest in property, or the incurring of a continuing obligation attached to property.¹³

(b) *Infants Relief Act 1874*

1.9 The rules of common law have been affected by statute, in particular by the Infants Relief Act 1874.¹⁴ Most contracts which a minor is likely to make will fall within the provisions of that Act. Section 1 of the Act purports to render certain minors' contracts (including loans and contracts for the supply of non-necessaries) "absolutely void". This provision has been the source of much difficulty: the courts have been reluctant to give the words of the section their literal meaning, though they have construed it as invalidating altogether a *guarantee* of a minor's contract caught by section 1. The problems and uncertainties caused by that section are many.¹⁵ The operation of the common law has also been affected by section 2 of the Act. At common law, it was possible for a minor, on attaining majority, effectively to ratify a contract entered into by him as a minor. Section 2 renders unenforceable any such ratification.¹⁶

(c) *Recovery of Property*

1.10 There is one further aspect of the current law which needs to be mentioned in this summary.¹⁷ A minor who obtains property by fraudulently inducing another person to enter into a contract unenforceable against the minor can, in some circumstances, be compelled to return that property. But, if there is no fraud, the minor (who may, for example, have bought non-necessary goods on credit) cannot be compelled either to return, or to pay for, what he has acquired.

¹³ The relevant law is set out in detail in paras. 2.10–2.12 of the Working Paper.

¹⁴ See also the Betting and Loans (Infants) Act 1892 which invalidates any agreement by a person of full age to pay a loan made to him while a minor, and also invalidates any negotiable instrument (e.g. a cheque) given in connection with such agreement.

¹⁵ See paras. 2.14–2.17 of the Working Paper.

¹⁶ The existing law on this point is fully explained in para. 2.18 and Part IV of the Working Paper.

¹⁷ See para. 2.24.

Defects in the Existing Law

1.11 The provisional view we expressed in the Working Paper was that the existing law was subject to a number of defects and uncertainties.¹⁸ Some of these matters are dealt with below,¹⁹ namely:—

- (i) The obscurity of section 1 of the Infants Relief Act 1874.
- (ii) The rule under which a minor, on attaining majority, is unable to ratify a contract entered into by him during his minority.
- (iii) The rule that a guarantor of a minor's "void" debt is not liable under the guarantee.
- (iv) The unjust enrichment that can arise from the fact that (except where he has induced the transaction by fraud) a minor can retain goods which he is not liable to pay for.

For the reasons given in paragraphs 3.2 to 3.4 below we shall not be dealing with the other defects and uncertainties in the existing law mentioned in the Working Paper, namely:—

- (i) The ambit of the category of "necessaries" is imprecise; and it is uncertain whether a minor is liable under an executory contract for the supply of necessaries.
- (ii) The rule that a minor is not liable for necessaries if he already has an adequate supply, even though this is not known to the supplier, is inconsistent with the stated basis of liability for necessaries, namely that the supplier should not be deterred from supplying the minor with his reasonable requirements by the fear that he will not be paid. This rule places him in a difficult position in which he may not be able to derive any advantage from the doctrine.
- (iii) The borderline between beneficial contracts of services (and analogous contracts) and trading contracts is not clear.
- (iv) There would seem to be no satisfactory justification for the continued existence of the category of contracts which are binding on the minor unless he repudiates them.
- (v) There is some doubt as to whether a minor can recover money paid or property transferred under a contract "absolutely void" by virtue of section 1 of the Infants Relief Act 1874, or under a contract unenforceable at common law.
- (vi) It is not clear whether the liability in equity of a fraudulent minor is restricted to making restitution of any property retained, or extends to restitution of traceable proceeds, or whether it extends at all to money lent; and whether in quasi-contract such a minor can be compelled not only to *restore* but also to *account*.

Our General Approach

1.12 Our general approach to the issues raised by minors' contracts has been that the principle underlying the existing law is sound.²⁰ The general rule should be that a minor's contract is unenforceable against him, but that rule should be (as we have explained that it is²¹) subject to a number of

¹⁸ See para. 2.28.

¹⁹ See paras. 4.1–4.23 below.

²⁰ As is explained in paras. 5.5–5.8 of the Working Paper.

²¹ See paras. 1.5–1.8 above.

specific exceptions covering contracts of a class likely to benefit minors. This principle we have called the principle of “qualified unenforceability”. Our provisional conclusion in the Working Paper was that this principle should be retained and we put forward a number of proposals for clarifying and modifying its application and the scope and extent of the relevant exceptions.²² This provisional conclusion was generally supported on consultation. We now recommend that the law governing minors’ contracts should continue to be based on the principle of “qualified unenforceability”.

An Alternative Proposal

1.13 Although we expressed the view that “qualified unenforceability” was the principle best designed to secure a proper balance between the need to protect a minor from the consequences of his own inexperience and the need to be fair to an adult who had occasion to contract with a minor, we canvassed²³ the desirability of adopting a radically different approach; this we called the “Alternative Proposal”. This approach would do away with the complications inevitably involved in “qualified unenforceability” by substituting, for the existing law, a simple rule whereby—

- (a) *any* contract made by a person aged 16 or over should be enforceable against him as it would be against an adult;
- (b) *no* contract made by a person under 16 should, regardless of its nature or content, be enforceable against him.

We went on to discuss the application of such a rule to particular contracts, the possibility of adopting (a) without (b) and the likely practical effect of implementing the proposal. In stating our conclusions,²⁴ we made it clear that the acceptability of the Alternative Proposal raised a social, not a legal, question and that its implementation might well have implications on which we were not then in a position to express views. We did not, therefore, feel able to make any firm recommendation as to the merits of this Alternative Proposal in advance of the consultation.

The Consultation

1.14 In addition to publishing our Working Paper, we consulted specifically individuals and organisations who appeared to us to be likely to have experience of the operation of the law relevant to minors’ contracts. We also sought views on the Alternative Proposal, not only from those who had commercial dealings with young people, but also both from those in, or approaching, the age-group most likely to be affected, and from headteachers and other members of the teaching profession, on the grounds that they would be particularly well qualified to assess the likely effect of the proposal on 16- and 17-year olds. A pamphlet explaining the Alternative Proposal and inviting comments on it was widely distributed to schools. We are grateful

²² Our proposals were set out in Parts VI and VII of the Working Paper; in Parts VIII to XI we went on to discuss a number of related topics, in connection with some of which we made specific suggestions for amending the existing law.

²³ Part XII of the Working Paper.

²⁴ *Ibid.*, para. 12.26.

to the Council of Local Education Authorities and the Independent Schools Information Service who gave us invaluable help with this distribution. We received over 90 replies from teachers, pupils (who generally submitted their views not as individuals but in the form of comments from whole classes) and parents.

1.15 We are grateful to all those who assisted us by commenting on the Working Paper or the pamphlet. A list of the individuals²⁵ and organisations who did so is contained in Appendix B to this report.

²⁵ In cases of comments from classes, we have indicated the school or other educational institution from which they came.

PART II

THE ALTERNATIVE PROPOSAL

2.1 Although adoption of the Alternative Proposal would greatly simplify the law and thus improve its form, it raises—as we have said—a social rather than a legal question. We could not, therefore, recommend its adoption unless the consultation showed a clear preponderance of favourable opinion among those best qualified to assess its social implications.

2.2 The consultation has revealed no such preponderance of opinion. On the contrary, a clear majority (about two thirds) of the older minors who responded to our invitation for views were opposed to the change: they valued the protection the existing law afforded to them during the transitional period between childhood and the attainment of the status of an adult. More importantly, a majority (about 60 per cent) of the adults, teachers, and others whose work brought them into close contact with the relevant age-group were also opposed: they stressed the vulnerability of 16- and 17-year olds to high-powered advertising etc. The lawyers and other professional specialists were more evenly divided, though those who favoured the proposal were sympathetic rather than enthusiastic. Furthermore, no group of consultees adduced evidence that the present state of the law caused practical difficulties.²⁶

2.3 It is plain that the Alternative Proposal would be controversial and would arouse considerable opposition. It is also plain that there is not sufficient support for it to justify its adoption in the face of the objections that have been, and would again be, raised. Although, therefore, we still see merit in the proposal and although we still doubt whether it would, in practice, have the harmful consequence that some fear, we do not propose to take it any further. The recommendations made in this report are therefore confined to amending the existing law based on “qualified unenforceability”.

²⁶ The one exception to this was the comment of the National Association for the Care and Rehabilitation of Offenders and others that the present law created difficulty over the grant of a lease to a minor. We deal with this point in paras. 5.13–5.16 below.

PART III

THE SCOPE OF OUR RECOMMENDATIONS

3.1 In our Working Paper, we considered that, should the Alternative Proposal not prove acceptable, our report would recommend comprehensive legislation amounting to codification of the (largely) judge-made law governing minors' contracts. Such legislation would involve the restatement in statutory form of the existing law, incorporating such changes as, in the light of the consultation, we might think desirable. To achieve that object, this legislation would have to formulate the general rule of "qualified unenforceability"; to define the exceptions to that rule; and to cover most of the other topics discussed in the Working Paper.

3.2 We were, however, as we observed in the Working Paper,²⁷ aware of the probability that, in spite of the numerous criticisms that could justifiably be made of the existing law, its defects and uncertainties gave rise in practice to relatively few difficulties of importance. The reduction of the age of majority to 18, the enactment in recent years of "consumer protection" legislation and the fact that minors can nowadays obtain credit only in very exceptional circumstances, unless at the same time an adult agrees to indemnify the creditor, have combined to make most of the problems which might be caused by the unsatisfactory state of the law more theoretical than real.

3.3 The consultation has confirmed this. The general view is that, while defects and uncertainties in the present law²⁸ certainly exist, not many of them give rise to practical difficulties. In particular, those in the credit industry who wrote to us commented that as a matter of commercial reality little credit was likely to be extended to minors, even if the law were changed in such a way as to make minors more generally liable when they entered into credit transactions. There was not much support among those who commented to us for codification of the law. We have, therefore, had to consider whether it would be better for us to recommend codification of this small area of contract law or to restrict our proposals for legislation to those aspects of the present law which could cause practical difficulty.

3.4 We have reached the conclusion that we should not attempt at this time a codification of the law of minors' contracts. It is clear from the response to our Working Paper and from other statements and published work that opinions differ as to the utility of codification in the area of contract law. In his Maccabean Lecture in May 1983 Lord Justice Robert Goff said: "Codification is sometimes necessary: but it should only be undertaken where the good it may do is perceived to outweigh the harm it must do, and that is, generally speaking, only likely to be the case where substantial reforms are both necessary and urgent." He doubted the ability of any mere restatement of the law to be either entirely accurate or complete. On the other side, it has been the view of many concerned with law reform that it is or should be possible, and is desirable if possible, to state the principles of contract

²⁷ See para. 2.29.

²⁸ See para. 1.11 above.

law, and in particular those applicable to minors' contracts, in terms of sufficient accuracy to satisfy Parliament that no unintended change will be worked, and of sufficient generality to retain for the courts the same capacity to do justice in individual cases as the existing common law provides. It is clear that if a code for minors' contracts were produced it would face close scrutiny to ensure that it was accurate and complete and it might fail to satisfy Parliament on either count. We have decided not to take on the task of devising a code of this part of the law because, while we differ among ourselves in our assessment of the utility of such a code, we are all agreed that diversion of the resources necessary to prepare it, and in particular the time of Parliamentary draftsmen, is not justified for that project at this time. We should have to take resources from other projects which are of greater practical importance, such as our work on supply of goods and on supply of services. By restricting our proposals for legislation to reform of specific defects we will be able to submit a short Bill of which the effect should be clear and certain. If the Bill is enacted, the law will be improved and the working of the law, as amended, will be apparent from decisions of the courts.

3.5 Accordingly, we have concluded that any legislation in this area of the law should be confined to the relatively few aspects of the existing law which are likely, in practice, to cause difficulties or to lead to injustice. Our recommendations for legislation are confined to the following topics:—

- (a) the repeal of section 1 of the Infants Relief Act 1874;
- (b) ratification and the consequential repeal of section 2 of the 1874 Act and section 5 of the Betting and Loans (Infants) Act 1892;
- (c) guarantees of minors' contracts;
- (d) the recovery of property from a minor who does not pay for it.

Our approach in making these recommendations is to rid this area of the law of some old restrictions and then to leave the courts free to develop the law as is appropriate. Most of these restraints were imposed by the Infants Relief Act 1874. On its repeal the common law principles which existed before its enactment would remain to be built upon by the courts.²⁹

3.6 We discuss our specific proposals more fully in Part IV of this report. In Part V we explain why we have decided not to proceed with certain proposals tentatively put forward in the Working Paper or suggested to us on consultation. Part VI contains a summary of our conclusions and recommendations. Appendix A contains a draft Bill, with Explanatory Notes, giving effect to our recommendations.

²⁹ See paras. 4.2 and 4.10 below.

PART IV

OUR RECOMMENDATIONS FOR LEGISLATION

Repeal of section 1 of the Infants Relief Act 1874

4.1 In the Working Paper³⁰ we set out the defects of section 1 of the Infants Relief Act 1874. Our criticisms of that provision were wholly endorsed by the consultation. It is, indeed, surprising that section 1 has survived on the Statute Book for over a century; its survival may be attributable to the resolute refusal of the courts to give to its words their literal meaning.

4.2 For the reasons given in the Working Paper, it is doubtful whether the section made any significant change in the operation of the common law and consequently its repeal, though essential to the implementation of our recommendation on guarantees,³¹ may not have as much practical effect as might at first sight appear. But the section has caused much difficulty and its obscure language remains a potential source of trouble; it certainly serves no useful purpose. We therefore recommend the repeal of section 1, the effect of which will be to leave contracts to which it purports to afford special treatment to be governed by the common law rules.

4.3 Clause 1 of the draft Bill in Appendix A implements our recommendation. It repeals the whole of the 1874 Act, since the only remaining provision is section 2, the repeal of which will implement our recommendation on ratification, discussed below.³² We considered whether it would be necessary for clause 1, in addition to repealing section 1 of the Infants Relief Act, also to provide positively for those contracts rendered "absolutely void" by the section to become again subject to the common law rules of unenforceability against a minor party. Our conclusion was that this was not necessary, since section 1 does not abrogate, but merely creates an exception to, those rules. Once the section ceases to have effect, the common law rules which have continued since 1874 to apply to other classes of contract entered into by minors will apply as they did before it was enacted. The point is dealt with more fully in the Notes on clause 1 in Appendix A.³³

Ratification of minors' contracts

4.4 In Part IX of the Working Paper we set out both the existing law relating to the ratification of minors' contracts and the arguments for and against enabling a minor, on attaining majority, to ratify (and thus make enforceable against himself) a contract entered into by him during his minority and, on that score, so far enforceable against him. The common law has permitted ratification;³⁴ but section 2 of the Infants Relief Act 1874 invalidated ratification and section 5 of the Betting and Loans (Infants) Act 1892

³⁰ See paras. 2.15–2.17.

³¹ See paras. 4.12–4.15 below.

³² See paras. 4.4–4.10 below.

³³ A similar point arises on the repeal of section 2 of the Infants Relief Act; it too is fully considered in the Notes on the draft Bill in Appendix A.

³⁴ See para. 9.1 of the Working Paper.

went further by invalidating a *new contract* to repay a loan contracted during minority. The 1892 Act only applied to loans and not to other obligations.

4.5 Section 2 of the 1874 Act did not invalidate a *new contract*, made after attaining majority, to carry out an obligation incurred under a contract unenforceable because of the party's minority at the time.³⁵ The effect was to create a distinction (often a fine one) between an ineffective ratification and an effective new contract. The results could be fortuitous and artificial.³⁶

4.6 Our conclusion was that, in this respect, the law was seriously defective and in need of reform which might take either of two courses:—

- (a) that recommended by the Latey Committee,³⁷ whereby both ratification and the making of a new contract would be fully effective;
- (b) the invalidation not only of ratification, but also of a new contract reproducing the effect of the earlier, and unenforceable, agreement.

Our provisional conclusion³⁸ was that, with one qualification, course (b) was to be preferred, on the ground that course (a) might expose the erstwhile minor to undesirable pressures from creditors and others. We recognised that it would not be practicable to prohibit the *making* of a new contract and therefore proposed that—

- (i) ratification should remain ineffective; and
- (ii) it should be a defence to an action on a “new contract” that its terms were unfair to the erstwhile minor.

4.7 Our proposal found no favour with those who commented on the Working Paper. They preferred the Latey Committee's approach. As we recognise, there is an inescapable measure of illogicality in a law which allows an 18-year old to bind himself absolutely, however imprudent he may be, by entering into a contract unconnected with any previous transaction, while imposing a restriction on his liability if the contract in question reproduces an existing, though unenforceable, obligation. Our original proposal is also open to two other objections:—

- (a) by making the erstwhile minor's defence to an action on a new contract depend on what is “fair”, it introduces an element of uncertainty into the law;
- (b) while getting rid of one source of fine distinctions (between “ratification” and a “new contract”), it may let in another (between a new contract that reproduces an existing obligation and one that creates an obligation marginally different).

4.8 In the light of the criticisms that have been made, we have reconsidered our earlier proposal. That the existing law is defective and needs reform, we do not doubt. But we are now satisfied that, of the two possible courses mentioned above, that proposed by the Latey Committee is the better. We therefore recommend that section 2 of the Infants Relief Act 1874 should

³⁵ See *ibid.*, para. 9.3.

³⁶ *Ibid.*

³⁷ See *ibid.*, para. 9.6.

³⁸ See *ibid.*, paras. 9.8 and 9.9.

be repealed to ensure that ratification of a minor's contract should be made effective and that no qualification should be imposed on the effectiveness of a "new contract".

4.9 There are two subsidiary matters:—

- (a) the form of any effective ratification: common law required no particular form,³⁹ but we have considered whether writing should be required. However, we see no particular need for this and therefore recommend that it should be sufficient for the erstwhile minor to show, unequivocally, an intention to be bound by the earlier agreement;
- (b) the effect in time of ratification: the general rule is that ratification of an act relates back to the time at which the act was performed. This was the common law rule applicable to the ratification of a minor's contract, so that money payments falling due before ratification, became enforceable,⁴⁰ and we think it is right in principle. We see no reason to depart from it.

4.10 Clause 1 in Appendix A implements our recommendation by repealing section 2 of the Infants Relief Act 1874. As in the case of the repeal of section 1, we considered whether it would be necessary for clause 1 to provide expressly that, in future, ratification of a minor's contract was to have the same effect as it had at common law before 1874. Since section 2 constitutes a procedural bar to the enforcement of such ratification and does not abrogate the pre-existing rules of common law, we have come to the conclusion that no such provision is necessary. The point is fully dealt with in the Notes on clause 1 in Appendix A.

4.11 Section 5 of the Betting and Loans (Infants) Act 1892 provides that a new contract entered into by a minor after reaching the age of majority to pay a debt due under a void loan contracted in infancy is itself void. In order to implement our recommendation in paragraph 4.8 above that not only should ratification of a minor's contract be made effective but also that no qualification should be imposed on the effectiveness of a new contract, it becomes necessary in our view to repeal section 5 of the 1892 Act and we recommend accordingly. Clause 1 in Appendix A implements this recommendation.

Validation of Guarantees

4.12 In Part XI of our Working Paper⁴¹ we discussed the question whether the guarantee, by an adult, of a contract unenforceable against a minor should be made enforceable against the guarantor. As we explained,⁴² the consequence of the enactment of section 1 of the Infants Relief Act 1874 has been to make such a guarantee void, because the Act provides for the contract

³⁹ Statute of Frauds (Amendment) Act 1828, s. 5 imposed the requirement that such ratifications should be in writing. This section was repealed by the Statute Law Revision Act 1875.

⁴⁰ *Harris v. Wall* (1847) 1 Ex. 122.

⁴¹ See paras. 11.10–11.13.

⁴² In para. 11.10.

itself to be “absolutely void”. On the other hand, the Act did not affect an indemnity, which remains effective and enforceable against the indemnifying party.

4.13 For the reasons given in the Working Paper,⁴³ we were of the opinion that this state of the law was unsatisfactory. Not only is the distinction between a guarantee and an indemnity one which often depends on technicalities having no relation to the substance of the transaction, but the invalidity of a guarantee operates to the disadvantage of both the minor himself and the other party to the contract. We saw⁴⁴ good reason why the guarantee of a minor’s contract *should* be enforceable against the guarantor. We did not, however, envisage that the validation of such a guarantee should alter the circumstances in which a guarantor, who has honoured the guarantee, is at present entitled to recover against the minor. In this situation the guarantor has assigned to him, or is subrogated to, the remedies of the creditor⁴⁵ and would thus only be entitled to the same recourse against the minor as would the creditor. He could sue the minor only when the creditor was entitled to do so. There is therefore no need to provide expressly as to the circumstances in which the guarantor can have recourse against the minor whose obligation he has honoured.

4.14 We provisionally recommended that a guarantee given to support a loan, or an advance of credit, to a minor should be enforceable against the guarantor to the same extent as if the minor had, at the time, been an adult. The consultation has fully endorsed that proposal. We now therefore recommend that where a guarantee is given in respect of an obligation of a party to a contract and the obligation is unenforceable against him (or he repudiates the contract) because he was a minor when he entered into the contract, the guarantee shall not for that reason alone be unenforceable against the guarantor. Clause 2 of the Bill in Appendix A implements this recommendation.

4.15 It is possible that the repeal of section 1 of the Infants Relief Act would, by itself, be enough to achieve our object. We noted in the Working Paper⁴⁶ the decision in *Coutts and Co. v. Browne-Lecky*⁴⁷ that the guarantee of a contract rendered “absolutely void” by section 1 was, on that ground, itself void. It could be argued that, once a contract now falling within section 1 ceases to be “absolutely void” and becomes unenforceable against a minor party, the rationale of this decision will no longer be relevant. However, there is no clear authority on the effect at common law of a guarantee of an unenforceable minor’s contract and we have come to the conclusion that it would not be safe to assume that, without some express statutory provision, the courts would hold such a guarantee to be as effective as if the minor party had been an adult—which is the result we wish to achieve. We therefore recommend that the legislation should include such a provision.

⁴³ See para. 11.12.

⁴⁴ As we explained in paras. 11.12 and 11.13 of the Working Paper.

⁴⁵ See Rowlatt on the Law of Principal and Surety, 4th ed., (1982), p. 134, n. 24.

⁴⁶ See para. 2.16.

⁴⁷ [1947] K.B. 104.

Recovery of Property Not Paid For

4.16 In our Working Paper,⁴⁸ we discussed the question whether there should be any remedy available to an adult party to an unenforceable contract under which the property had passed to a minor and the minor refused to pay. The absence of any remedy in such a case seemed to us to be a source of potential injustice and we accordingly provisionally recommended that the law should be amended so as, in effect, to give the minor the choice between returning the property and paying for it.

4.17 Our provisional recommendation was set out in paragraph 13.14 of the Working Paper. In essence, it was that, in default of payment, the adult party should be entitled to the return of the property *in specie* but not to any other remedy, save that the minor, if unable to return the property, should have to pay for it where he had disposed of it with the intention of defeating the claim for its return. We did not propose anything in the nature of a tracing order where the property had been sold or exchanged. The reasons for restricting the adult party's remedy were as follows:—⁴⁹

- (i) the concept of tracing would be unacceptably complicated;
- (ii) a rule which restricted the adult party's remedy to the recovery of specific articles would be clear and simple;
- (iii) such a rule would achieve the best balance between the policy of not allowing the minor to retain an unjust enrichment and the policy of causing the minor to be a defendant only in actions which are simple to pursue and result in remedies which are easy to execute.

4.18 Consultation has shown general support for our view that the existing law is defective and that a measure of reform is required if injustice is to be avoided. We were interested to note that the older minors, who commented on our Alternative Proposal, did not see why the law should allow their less scrupulous co-aevals to "have their cake and eat it". Although our approach to this problem, as explained in the Working Paper, was generally welcomed on consultation, further consideration has led us to the conclusion that the specific proposal we put forward, though sound in principle, is not the best way of achieving the desired result.

4.19 As we recognised in the Working Paper,⁵⁰ a Bill designed to cover in detail every possible situation would be intolerably complicated. Our proposal was framed so as to cover the most obvious cases, i.e. where the minor had either retained the property or sold it in order to defeat the adult party's claim. It could not cover every case of an "unjust enrichment" arising out of failure to pay for something bought on credit. We also recognised that, in exercising the power to grant relief to the adult party, the court would have to have a wide discretion to vary the terms of the original contract and to impose conditions as to payment etc. In paragraph 6.10 of the Working Paper we put forward some suggestions to that end.

⁴⁸ See paras. 6.5–6.12.

⁴⁹ See paras. 6.8 and 6.9.

⁵⁰ See para. 6.8.

4.20 It is clear that, notwithstanding the limited scope of our proposal, its implementation would require a relatively complex statutory provision. We are anxious, in this field, not to fetter too closely the court's powers to do justice according to the circumstances of each case and we think, on further examination, that the sort of statutory provision we had in mind might do that. We have, accordingly, sought some other way of achieving our objective.

4.21 In the Working Paper⁵¹ we set out the existing law governing a minor's liability in equity for fraud. Although the extent of the equitable remedy available to an adult who has sold something on credit to a fraudulent minor is not completely clear, it is clear that the minor can be compelled to hand over the proceeds, if he has sold the property. Our present objective would be met if this equitable principle were extended to cover a case where the minor, though not guilty of fraud, had failed to pay for goods obtained on credit. Such an extension of the equitable principle would leave the courts free to decide whether, and in what circumstances, any remedy in the nature of a tracing order should be available. It would also, subject to the restriction on its power which we discuss in paragraph 4.23 below, enable the court to exercise the sort of discretionary power envisaged in paragraph 6.10 of the Working Paper, without being fettered by any statutory restrictions.

4.22 The advantages of the course we are now suggesting are that, first, the necessary legislation would be relatively simple; and, secondly, the courts would be able to apply it in accordance with the principles with which they are familiar and which they would be free to develop. This we consider to be desirable. Accordingly, we recommend that where a person (the supplier) has entered into a contract with a minor and the contract is unenforceable against the minor (or he repudiates it) because he was a minor when the contract was made, the court may, if it is just and equitable to do so, require the minor to transfer to the supplier any property acquired by the minor under the contract, or any property representing it. This recommendation is not to prejudice any other remedy available to the supplier. It involves the enactment of a provision extending, in general terms, the remedy available against a fraudulent minor to cases where, irrespective of fraud, a minor has failed to pay for property acquired by him on credit.

4.23 We have considered whether legislation implementing this recommendation should provide for the case where the minor has sold the property and dissipated the proceeds of sale. As mentioned above,⁵² our original proposal would have given the adult party a remedy if the disposal had been effected with the intention of defeating a claim for the return of the property, but not otherwise. On reflection, we think that no provision should be made for the case where the minor has sold the property and dissipated the proceeds of sale. The court's power should be limited to ordering the transfer of property acquired under the contract, or property representing it. The minor should not be required to pay to the seller a sum equivalent to the purchase price

⁵¹ See paras. 2.24 and 2.25.

⁵² See para. 4.19.

or the value of the property: such a requirement would amount to the enforcement of the contract against him. Our conclusion on this point makes it unnecessary for us to consider further the amendment we proposed in the Working Paper⁵³ to the Hire Purchase Act 1965. Contracts falling within that legislation can be left to be governed by the existing statutory provisions.

Retrospective Effect of Our Recommendations

4.24 Our recommendations for legislation are all given effect to by the draft Bill contained in Appendix A. We recommend that the clauses implementing these recommendations should not apply to any contract entered into before the Bill comes into force. The matter is dealt with more fully in the Notes on Clauses in Appendix A.

⁵³ See para. 6.11.

PART V

PROPOSALS NOT INCLUDED IN OUR DRAFT BILL

Restatement and Clarification

5.1 Our decision not to recommend codification of the law governing minors' contracts and to restrict our legislative proposals to remedying those defects in the existing law which cause practical difficulties has necessarily meant our discarding a number of suggestions for reform which we put forward in the Working Paper. In this part of our report we explain, in respect of each such proposal, why we are not now proceeding with it.⁵⁴

5.2 Many of our original proposals were consequential on a codification of the relevant law and amounted to little more than a restatement, in statutory form, of the rules of common law, with, in some cases, a measure of clarification, or the incorporation of minor amendments which we saw as effecting marginal improvements. Our decision means that the legislation which we now recommend does not include any statutory formulation of:—

- (a) the general rule of unenforceability⁵⁵ or its effect;⁵⁶
- (b) the rules governing contracts of employment;⁵⁷
- (c) the rules applicable to covenants in restraint of trade;⁵⁸
- (d) the rules governing the reopening of executed contracts;⁵⁹
- (e) a rule which would abolish those classes of contract which are, at common law, binding until repudiated.⁶⁰

This is not to say that we think clarification of doubtful points, or the effecting of minor amendments, would not be desirable; it is that, in the absence of any need for these measures, and of any evidence that such an enactment would resolve any practical difficulties, we do not think the case for legislation is made out.

Substantive Amendments

5.3 Some of the provisional proposals which we put forward, but are now discarding, would have gone further and have made substantive changes in the law. They include our proposals for a new exception to the general rule to meet the case where a minor seeks to enforce a contract;⁶¹ to enable a minor to obtain specific performance;⁶² to extend a lender's right to repayment of a loan made for the purchase of necessities;⁶³ to make a minor liable in tort for deceit in certain circumstances where he is not so liable

⁵⁴ We have already, in Part II of this report, explained why we are not proceeding with the Alternative Proposal, canvassed in Part XII of the Working Paper and summarised in paras. 13.5-13.9.

⁵⁵ See para. 13.10 of the Working Paper.

⁵⁶ See *ibid.*, paras. 13.12 and 13.13.

⁵⁷ See *ibid.*, paras. 13.22 and 13.23.

⁵⁸ See *ibid.*, para. 13.25.

⁵⁹ See *ibid.*, para. 13.29.

⁶⁰ See *ibid.*, para. 13.28.

⁶¹ See *ibid.*, para. 13.16.

⁶² See *ibid.*, para. 13.18.

⁶³ See *ibid.*, para. 13.27.

at present.⁶⁴ These proposals could have been proceeded with independently of codification and we remain of the opinion that the arguments we put forward in the Working Paper are sound. Our consultees did not, by and large, disagree. They have, however, confirmed what we thought was probably the case, namely that the defects in the law which these proposals were designed to remedy do not in practice give rise to the difficulties of which they might, in theory, be the sources and our conclusion is that legislation on these matters is not necessary.

Necessaries

5.4 In the Working Paper⁶⁵ we considered in detail the present law applicable to contracts for necessaries, its defects and possible measures of reform. We recognised that, for all its defects, the present law probably gave rise to relatively few problems in practice and we canvassed the desirability of leaving it unchanged, of abolishing the whole doctrine, and of adopting the middle course of reforming the law while retaining the doctrine itself. Our conclusion in the Working Paper⁶⁶ was that on balance reform was the best course. Accordingly, we provisionally recommended two changes of substance:—

- (a) the replacement of the category of “necessaries” by a new category of “necessities”, somewhat narrower and more objectively defined so as to comprise only items essential to maintain a minimum standard of life; and
- (b) making irrelevant to the classification of the goods supplied as “necessaries” (or “necessities”) the minor’s status, his social position, his means, or his state of supply of similar articles.

5.5 Our view that the law relating to contracts for necessaries was open to criticism on the grounds we had put forward was, on the whole, endorsed on consultation. The tenor of the comments was, however, to the effect that the law was reasonably well understood and did not in practice operate to the prejudice of traders who dealt with minors. Moreover, our concept of “necessities”, as a replacement for “necessaries”, did not find favour. It was argued that the distinction between the two concepts was largely verbal and that the introduction of a new concept so similar to the existing one would serve only to cause confusion. Few commentators saw any advantage in making the change; most thought it would do more harm than good.

5.6 Whether retention of the doctrine of “necessaries” continues to serve a useful purpose must be open to argument; certainly, some of those who commented to us thought that it could be abolished. But the majority were, as we were ourselves, in favour of some protection for traders who supply to minors goods which minors *need* to be able to acquire and we do not, therefore, wish to reconsider our provision conclusion that it would be a mistake to abolish the whole doctrine. We are, however, satisfied in the light

⁶⁴ See *ibid.*, paras. 13.34 and 13.35.

⁶⁵ See paras. 7.1–7.25.

⁶⁶ See para. 7.25.

of the consultation that our proposed substitution of “necessities” for “necessaries” would not effect any appreciable improvement in the existing law and that the relevance of a minor’s means etc., does not in practice cause injustice to traders. After much consideration, we have concluded that the best course is to leave the existing law on “necessaries” unaltered and we recommend accordingly.

Validation of Minors’ Contracts

5.7 In Part X of the Working Paper, we discussed the question whether there was a need for some statutory procedure whereby a contract, otherwise unenforceable because of the party’s minority, could be “validated”.⁶⁷ In the Working Paper, we suggested some possible approaches:—

- (a) judicial conferment of contractual capacity on a particular minor;⁶⁸
and
- (b) validation of a particular contract.⁶⁹

Under (b) above, we considered separately:—

- (i) validation of “small” transactions;⁷⁰ and
- (ii) validation of “large” transactions.⁷¹

Our provisional conclusion was that there was no sufficient case for (a) or (b)(i) above, and there was nothing in the consultation to suggest that that conclusion was wrong. Although our provisional conclusion on (b)(ii) was also negative, we were more doubtful and we specifically invited comments.

5.8 On consultation the only support for a procedure enabling “large” transactions to be judicially validated came from The Law Society. However, because we considered that The Law Society was likely to have considerable experience in this field, we asked them and the Institute of Chartered Accountants in England and Wales to provide us with evidence of any difficulties which are caused at present by the lack of any validation procedure and which might be removed by the creation of such a procedure. We suggested to them that, when a minor proposes to enter into a transaction, he and the other party to that transaction might refer it for approval to the High Court, whose approval would make the party’s minority irrelevant to its enforceability. Neither The Law Society nor the Institute of Chartered Accountants in England and Wales produced any evidence of present difficulties in this area and the latter body saw considerable problems in introducing a “validation” procedure. We have, therefore, adhered to our provisional conclusion that for all transactions such a procedure is neither necessary nor desirable and we recommend accordingly. Our reasons are these:—

⁶⁷ In para. 10.16 of the Working Paper we referred to the fact that other common law jurisdictions have enacted, or proposed, that their courts should be empowered either to grant full contractual capacity to a particular minor or to pronounce valid and enforceable a particular minor’s contract before or at the time it is made. Such comparative material is to be found in the Appendix to the Working Paper.

⁶⁸ See para. 10.3 of the Working Paper.

⁶⁹ See *ibid.*, paras. 10.4–10.15.

⁷⁰ See *ibid.*, paras. 10.7–10.11.

⁷¹ See *ibid.*, paras. 10.12–10.15.

- (a) The evidence we have received does not make us think we were wrong in supposing⁷² that the absence of any such procedure does in fact (though it could in theory) cause problems; and it would be inconsistent with our present approach to legislative reform of this area of the law to make any recommendation unless it were aimed at resolving some practical difficulty or removing some anomaly in the law.
- (b) It would not be easy for the Master or Registrar to reach a satisfactory decision. Every party appearing before him would want him to approve the proposed contract and there would be no “contradictor” ready to argue on the other side. That role could be filled only by the Master or Registrar himself, and he would face difficulty in filling it. In the familiar “minor’s settlement” application, the court can draw on its wide experience of similar claims for damages; the parties are adversaries and the issues are usually not complicated. Whether the terms of a contract offered to a 16 year old pop singer are on balance for his own benefit may pose questions both unusual and complicated.
- (c) We doubt whether, in reality, any minor who wishes, for example, to become a pop-star or a film-star and who has found a potential employer has failed to conclude a contract of employment simply because he is a minor. At present, those who are concerned with the drawing-up of such contracts have to resolve any doubts in favour of the minor if they are not to run the risk of the contract being held to be unenforceable because not for the minor’s benefit. A validation procedure would probably be useful to some employers but, while they would have the advantage of there being no risk of the contract subsequently being held to be unenforceable, they would be likely to seek to draft the contract less in the minor’s favour and to try to have that draft validated by the court. If the court disapproved of the provision in question, it could be altered but if the court approved it the contract would be binding. In most cases the principal consideration in the minor’s mind would be that he should end with a concluded contract. He is unlikely to want to raise difficulties with the court about the contract proposed by his potential employers.

5.9 For all these reasons, we have come to the conclusion that our provisional view was right. We do not, therefore, recommend any statutory procedure for validating “large” (or any other) minor’s contract which would otherwise not be enforceable against the minor party.

Receipts and Discharges

5.10 Although the matter was not discussed in the Working Paper it was suggested to us in the course of consultation that the inability of a minor to give a valid discharge for money received by him can be a source of difficulty. We think that there may here be some misunderstanding of the existing law. In the case of an ordinary contract debt (such as the price due for goods sold on credit by a minor, or the credit balance on his current banking account) payment extinguishes the obligation and the only question is whether payment

⁷² See *ibid.*, para. 10.15.

has in fact been made. If there is a dispute, a receipt signed by the minor (or his endorsement on his own cheque) will be as good evidence of payment as would a similar document signed by an adult. The fact that the creditor is a minor need cause no particular problem.

5.11 We were, however, told that practical difficulties arise over money payable to a minor under a trust. In particular, Life Assurance Offices (who often have to pay to a minor the proceeds of a policy taken out on his parent's life) are seriously hampered by his inability to give a valid discharge for the payment of trust money: the same difficulty faces trustees of a will who have a legacy to pay to a minor child of the testator.

5.12 We have therefore considered whether we ought to recommend any legislation on this point. We have decided not to do so, because the rule is really part of the law of trusts and, therefore, raises questions which we did not include in our consultation and which fall outside the present exercise.

Leases granted to Minors

5.13 A second point arising from the consultation, though not mentioned in the Working Paper, was a difficulty felt by some of our consultees over the grant of a lease to a minor. One public authority told us that, as a matter of policy, it would not let property to a minor because it feared that it would not be able to enforce the terms of the lease (particularly the obligation to pay the rent) against him. The National Association for the Care and Rehabilitation of Offenders commented on our Working Paper that the impracticability of granting an effective lease to a minor contributed to homelessness among the young.

5.14 Our Working Paper was not concerned with rights of minors to acquire interests in property; but the point that has been put to us is an important one, which we think we ought to deal with in this report, not least because we are satisfied that the fears of those who have raised it are based on a misunderstanding of the existing law which ought to be removed.

5.15 The first point we wish to emphasise is that a lease is one of the four classes of contract, referred to in our Working Paper,⁷³ which are binding on a minor unless and until repudiated by him. It is *not* a contract unenforceable against him and the authorities⁷⁴ show that a minor who rents land is liable to pay the rent accruing during the currency of the tenancy, up to the time he repudiates it—if he does. We think our commentators' difficulty arises from the statutory provisions preventing minors from acquiring a *legal estate* in land, which a normal letting (even a weekly tenancy created orally) constitutes. The relevant provisions are section 19(1) of the Law of Property Act 1925 and section 27(1) of the Settled Land Act 1925, the combined effect of which is to make a conveyance of a legal estate in land to a minor operate as an agreement to execute a settlement in his favour, with the vendor/lessor in the meantime holding the land in trust for the minor. As a trustee, he

⁷³ See para. 2.10.

⁷⁴ *Valentini v. Canali* (1889) 24 Q.B.D. 166; *Davies v. Benyon-Harris* (1931) 47 T.L.R. 424.

holds the land for the minor on the terms and conditions of the original purported grant; this is not inconsistent with the minor's obligation to pay the rent and observe the conditions of the "lease".

5.16 Moreover, the statutory provisions do not restrict a minor's ability to acquire an *equitable interest* in land: there is nothing to prevent a would-be lessor granting an *equitable* tenancy to a minor. The desired result can be achieved by the lessor's entering into a contract with the minor to grant him a lease on the agreed terms, followed by the minor's entry into possession of the property let. As far as the protection under the Rent Acts is concerned, we think the position is correctly stated in Megarry's *The Rent Acts*⁷⁵ namely that it is immaterial whether the relevant tenancy is legal or equitable. For these reasons, we do not think the existing law need inhibit the letting of property to minors and we do not, therefore, recommend any legislation in this field. We hope that what we have said in this report will help the letting, in appropriate circumstances, of residential (and other) accommodation to minors.

⁷⁵ 10th ed., (1967) p. 179.

PART VI

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

6.1 We summarise here the conclusions and recommendations for reform set out in the earlier parts of this report and, where appropriate, we identify the relevant clauses in the draft Minors' Contracts Bill⁷⁶ to give effect to the recommendations.

General Conclusions

- 6.2 (a) The law governing minors' contracts should continue to be based on the principle of "qualified unenforceability". (Paragraph 1.12)
- (b) The "Alternative Proposal" canvassed in the Working Paper (that any minor over 16 should, for the purpose of the law of contract, be treated as an adult and that no contract entered into by a minor under 16 should be enforceable against him) does not have sufficient support for its adoption to be recommended. (Paragraph 2.3)
- (c) The number of practical difficulties to which the defects and obscurities in the existing law give rise is not sufficient to justify the undertaking of the major legislative exercise involved in the preparation and enactment of a comprehensive codification of the law governing minors' contracts. (Paragraphs 3.1-3.4)
- (d) Any legislation should be confined to the relatively few aspects of the existing law which are likely, in practice, to cause difficulties or to lead to injustice. (Paragraph 3.5)

Specific Recommendations

- 6.3 (a) Section 1 of the Infants Relief Act 1874 should be repealed. (Paragraph 4.2; clause 1)
- (b) Section 2 of the Infants Relief Act 1874 and section 5 of the Betting and Loans (Infants) Act 1892 should be repealed to ensure that minors' contracts should be capable of effective ratification. (Paragraphs 4.8 and 4.11; clause 1)
- (c) Where a guarantee is given in respect of an obligation of a party to a contract and the obligation is unenforceable against him (or he repudiates the contract) because he was a minor when he entered into the contract, the guarantee should not for that reason alone be unenforceable against the guarantor. (Paragraph 4.14; clause 2)
- (d) Where a person (the supplier) has entered into a contract with a minor and the contract is unenforceable against the minor (or he repudiates it) because he was a minor when the contract was made, the court may, if it is equitable and just to do so, require the minor to transfer to the supplier any property acquired by the minor under the contract, or any property representing it. This recommendation is not to prejudice any other remedy available to the supplier. (Paragraph 4.23; clause 3)

⁷⁶ See Appendix A.

- (e) The reforms recommended under (a), (b), (c) and (d) above should not apply to contracts entered into before the commencement of the draft Bill. (Paragraph 4.24; clauses 1, 2 and 3)
- (f) No change should be made in the law relating to contracts for "necessaries". (Paragraph 5.6)
- (g) No statutory procedure should be introduced for the purpose of enabling the court to validate a particular minor's contract. (Paragraph 5.8)
- (h) The ability of a minor to give a valid discharge for trust money forms part of the law of trusts and should not be dealt with in this exercise. (Paragraph 5.12)
- (i) There is no need to amend the law relating to minors' contracts for the purpose of facilitating the letting of land to minors. (Paragraph 5.16)

(Signed) RALPH GIBSON, *Chairman*
BRIAN DAVENPORT
PETER NORTH

J. G. H. GASSON, *Secretary*
30 April 1984

APPENDIX A

**DRAFT
OF A
BILL
TO**

Amend the law relating to minors' contracts.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

- Disapplication
of Infants
Relief Act 1874
etc.
1874 c. 62.
1. The following enactments shall not apply to any contract made by a minor after the commencement of this Act—
- (a) the Infants Relief Act 1874 (which invalidates certain contracts made by minors and prohibits actions to enforce contracts ratified after majority); and
- 1892 c. 4. (b) Section 5 of the Betting and Loans (Infants) Act 1892 (which invalidates contracts to repay loans advanced during minority).

EXPLANATORY NOTES

Clause 1

1. This clause disapplies the Infants Relief Act 1874 and section 5 of the Betting and Loans (Infants) Act 1892 in relation to any contract entered into after the commencement of the Bill.

2. *Paragraph (a)* of this clause refers to the Infants Relief Act which contains only two effective provisions, sections 1 and 2. Section 1 purports to render “absolutely void” certain minors’ contracts which, at common law, were not void, but were not enforceable against the minor party. Section 1 did not abrogate the common law governing minors’ contracts, but was in the nature of a “gloss” on it. The disapplication of this section will, therefore, result in the contracts in question becoming again subject to the rules of common law. The policy reasons underlying this repeal are set out in paragraph 6.1 of our Working Paper. In disapplying section 1 of the Act of 1874 this clause implements the recommendation in paragraph 4.2 of the report.

3. In disapplying section 2 of the Act of 1874, this clause makes effective, on a minor’s reaching the age of majority, his ratification of an otherwise unenforceable contract entered into by him as a minor. At common law, such ratification could be effective. Section 2, while not abolishing the common law rules, imposes a bar on proceedings to enforce ratification (whether or not there is “new consideration”) of a minor’s contract, by providing that “no action shall be brought” for that purpose. The removal of this procedural bar serves to reinstate the relevant rules of common law. The policy considerations leading to this disapplication are set out in paragraphs 2.1 to 2.4 and in Part IX of our Working Paper. The disapplication of section 2 implements the recommendation contained in paragraph 4.8 of the report. The 1874 Act will continue to apply to Northern Ireland: clause 4(3) ensures that the effect of its repeal does not extend beyond England and Wales.

4. *Paragraph (b)* of this clause refers to section 5 of the Betting and Loans (Infants) Act 1892. This clause, by disapplying section 5 of the 1892 Act, makes effective any new agreement entered into by a minor after reaching the age of majority (and any negotiable instrument given in connection with such an agreement) to repay a loan advanced to him during his minority. This is a corollary of the disapplication of section 2 of the Act of 1874; it implements the recommendation in paragraph 4.11 of the report. The Act of 1892 will continue to apply to Scotland and Northern Ireland: clause 4(3) ensures that the effect of the repeal of the Act does not extend beyond England and Wales.

5. This clause affects only contracts entered into *after* the commencement of the Bill—which, by virtue of clause 4(2) will be three months after enactment. It can be argued that the repeal of section 2 of the Infants Relief Act, insofar as that section imposes a procedural bar on an action to enforce ratification of a minor’s contract irrespective of that contract being “absolutely void” under section 1, should logically

EXPLANATORY NOTES

Clause 1 (continued)

operate on the date of the ratification, not the contract. However, the making of the necessary distinction would greatly complicate this clause to very little (if any) purpose. Accordingly, it is so framed as not to affect any contract entered into by a minor before the commencement of the Bill. The result, for a minor reaching majority *after* the date of commencement, will be that (subject to the general rules of the common law)—

- (a) ratification *after* the date of a contract entered into before that date will remain unenforceable against him;
- (b) a new contract made after that date, notwithstanding that is for the repayment of a loan incurred during his minority and *before* that date, will be enforceable and any negotiable instrument given by him in connection with that contract will be valid; and
- (c) ratification of any contract entered into *after* that date will be enforceable.

The prospective effect of clause 1 implements the recommendation in paragraph 4.24 of the report.

Minors' Contracts

Guarantees.

2. Where—

- (a) a guarantee is given in respect of an obligation of a party to a contract made after the commencement of this Act, and
- (b) the obligation is unenforceable against him (or he repudiates the contract) because he was a minor when he entered into the contract,

the guarantee shall not for that reason alone be unenforceable against the guarantor.

EXPLANTORY NOTES

Clause 2

1. This clause provides for the guarantee of an obligation incurred by a minor party to a contract not to be unenforceable solely because the obligation was unenforceable against (or the contract was repudiated by) the minor on the ground of his minority. In so providing, this clause implements the recommendation in paragraph 4.14 of the report. The policy considerations leading to that recommendation are set out in paragraphs 4.13 to 4.15 of the report and in paragraph 11.10 to 11.13 of the Working Paper.

2. This clause operates on the guarantee of a minor party's obligation. It may be asked whether, in the case of a contract for the purchase of goods at a fixed price, that obligation is to pay the fixed price or, where it differs, a reasonable price. The clause has no relevance in relation to goods that are "necessaries" since there is an enforceable obligation on the minor party to pay a reasonable price for them. In relation to other goods the obligation to pay is rendered unenforceable by the purchaser's minority. The clause imposes an obligation on the guarantor to pay the fixed price and the question of paying a reasonable price does not arise.

3. *Paragraph (b)* of this clause refers expressly to the repudiation of the relevant contract on the ground of the party's minority. The expression "repudiates" is used in this clause (and in clause 3) because it is the one that has always been and will continue to be used in those cases in which the minor is entitled to escape liability before or within a reasonable time after his majority.

4. The effect of a guarantee of a contractual obligation which is voidable by the guarantor's "principal", whether on the ground of his minority or on any other ground, must depend on the precise terms of the guarantee. It has, however, been thought desirable for two reasons to provide that repudiation of the relevant contract on the grounds of the party's minority is not, by itself, to invalidate a guarantee of that party's obligation. The first reason is that this clause may be relevant in relation to obligations incurred by a minor before his repudiation of the contract. This relevance stems from the fact that under the present law it is uncertain whether all such obligations are enforceable against him, save that it is clear that he is liable to pay rent arising before the repudiation of a lease. The second reason is that it is possible, although perhaps unlikely, that an obligation could be incurred after the minor's repudiation of the contract if the guarantee in question is expressly worded to cover such an obligation. Clause 2 is not intended to interfere with the effect of such wording.

5. This clause does not set out the circumstances in which the guarantor, who has honoured the guarantee, is to continue to be entitled to recover against the minor. He will have such a right of recovery only in those cases in which the minor could have been sued by his original creditor.

EXPLANATORY NOTES

Clause 2 (continued)

6. This clause does not affect a guarantee given in respect of an obligation incurred by a minor before the commencement of the Bill, notwithstanding that the guarantee itself was given after commencement. This implements the recommendation in paragraph 4.24 of the report.

Minors' Contracts

Restitution.

3.—(1) Where—

- (a) a person (“the plaintiff”) has after the commencement of this Act entered into a contract with another (“the defendant”), and
- (b) the contract is unenforceable against the defendant (or he repudiates it) because he was a minor when the contract was made,

the court may, if it is just and equitable to do so, require the defendant to transfer to the plaintiff any property acquired by the defendant under the contract, or any property representing it.

(2) Nothing in this section shall be taken to prejudice any other remedy available to the plaintiff.

EXPLANATORY NOTES

Clause 3

1. This clause empowers the court to require (if it is just and equitable to do so) a party, who has acquired property under a contract unenforceable against him because of his minority, to make restitution to the other party. This power to order restitution is not to prejudice, and is in addition to, any other remedy available to that other party. In so providing, this clause implements the recommendation in paragraph 4.22 of the report. The policy considerations leading to that recommendation are set out in paragraphs 4.16 to 4.23 of the report and in paragraphs 6.5 to 6.13 of the Working Paper.

2. The effect of this clause is to extend the power of the court (that is the High Court or, within the financial limit of its general jurisdiction in actions of contract, a county court) to require a minor who has acquired property under an unenforceable contract to restore it. As the law now stands, that power is confined to cases where the minor induced the other party to enter into the contract by fraud. By virtue of this clause, the court will have the same power in cases where there has been no fraud on the part of the minor; the power will also be exercisable where the minor has, on the ground of his minority, repudiated the contract under which he acquired the property.

3. There is no attempt to spell out the circumstances in which the court may exercise its discretion to make an order, beyond imposing the condition that it must be "just and equitable" to do so. The court's power is limited to ordering the transfer of property acquired under the contract, or property representing it. Thus, if the minor has sold or exchanged the goods acquired under the contract, he can be compelled to pay over the price, or hand over the goods received in exchange. But if he has consumed or otherwise "dissipated" the goods or their proceeds, he cannot be required to pay to the seller a sum equivalent to the purchase price, or to the value of the goods. To require him to do that would, in effect, be to enforce the contract against him.

4. This clause does not deal with the further question whether, or in what circumstances, the court could make a "tracing order" in favour of the original transferor and against a third person who has acquired the property from the minor party. This question (which is touched on in paragraph 6.3 of the Working Paper) is left to the application of the general rules under which the courts already operate.

5. This clause affects only property acquired under a contract entered into after the commencement of the Bill. This provision implements the recommendation in paragraph 4.24 of the report.

Minors' Contracts

Repeals,
commencement
and extent.
1874 c. 62.
1892 c. 4.

4.—(1) The Infants Relief Act 1874 and the Betting and Loans (Infants) Act 1892 are hereby repealed (in accordance with section 1 of this Act).

(2) This Act shall come into force at the end of the period of three months beginning with the date on which it is passed.

(3) This Act extends to England and Wales only.

EXPLANATORY NOTES

Clause 4

1. This clause provides for the repeals, commencement and extent of the Bill.

2. *Subsection (1)* repeals the Infants Relief Act 1874 and the Betting and Loans (Infants) Act 1892 "in accordance with section 1 of this Act". The relevance of the words in quotation marks is that, as explained in the Notes on Clause 1, the repealed provisions will still apply to contracts entered into before the Bill came into force. The whole of the 1892 Act is repealed by this subsection because the only sections of it that are still in force in England and Wales are section 5, which is repealed by clause 1 of the Bill, and section 8 which deals with the short title of the Act.

3. *Subsection (2)* provides for the Bill to come into force three months after enactment.

4. *Subsection (3)* restricts the effect of the Bill to England and Wales. The effect of this subsection is that the Infants Relief Act 1874, which presently applies in England and Wales and in Northern Ireland but not in Scotland, will continue to apply only in Northern Ireland. The Betting and Loans (Infants) Act 1892 applies to the whole of the United Kingdom. Subsection (3) repeals it only as part of the law of England and Wales. It will remain in force in Scotland and Northern Ireland.

Minors' Contracts

Short title. 5. This Act may be cited as the Minors' Contracts Act 1984.

EXPLANATORY NOTES

Clause 5

1. This clause gives the Bill the short title of "the Minors' Contracts Act 1984". It requires no comment.

APPENDIX B

List of Individuals⁷⁷ and Organisations who sent comments on Working Paper No. 81 and the pamphlet which was a summary of this paper

(a) Headteachers, teachers, pupils and parents

Accrington and Rossendale College
Albany Comprehensive School
Anglia Region Girl Guides
Army Apprentices College
Mr. J. Atherford
Mrs. H. N. Baker
Basildon College Of Further Education
Mr. H. R. Barbier
The Beacon Youth Centre
Belgrave Comprehensive School
Binley Park School
Mr. A. M. Bird
Blackburn College of Technology & Design
Brooklands Technical College
Mr K. J. Brookman
Mr. P. L. Buet
Burnley College of Arts & Technology
Mr. R. Burrows
Cardigan County Secondary School
Chalvedon School
Mr. W. Chapman
Chelmsford College Of Further Education
2nd Chelmsford Girls Brigade Company
Cheshire Education Committee
Chippenham Technical College
Chipping Sodbury School
Mr. J. A Coatman
Colchester Institute
Mr. M. J. Cole
Mr. R. T. Cooper
County Court School
The County High School For Girls, Chelmsford
County Infants' School, Washingborough
Cranbrook School
Dorset County Youth Advisory Committee
Mr. P. A. Dutton
Ellesmere Port Catholic High School
Miss H. Elphick
Fleetwood Secondary School
Mr. A. Garbutt
Mrs. D. Geddes
Mr. H. C. Gillard

⁷⁷In the case of comments from classes, we have indicated the school or other educational institution from which they came.

Grammar School For Girls, Maidstone
Mr. B. J. Hall
Mr. G. Hamilton
Dr. G. Hampson
Mr. P. E. Haskell
Mr. P. C. Hastings
Mr. D. J. Hatfield
Hebburn Technical College
Mr. G. R. Hills
Dr. R. Keen
Kirklees Metropolitan Council Education Committee
Marple Hall School
Moorhead High School
Morecambe High School
Nelson and Colne College
Newton-Le-Willows College of Further Education
North Cheam Youth Centre
North Cheshire College
Mr. J. Norwood
Mr. P. D. Olsen
Ongar Comprehensive School
The Park High School, Pontefract
Park-Lawn Further Education Centre
Mr. H. J. Penfold
Mr. P. T. Pethers
Mr. K. Powell
Queen Mary's College, Basingstoke
Mr. P. H. Riggulford
Rugby High School
Saint Andrew's School, Leatherhead
Mr. R. G. Saul
Sheldon School
Mrs. S. Smith
South Warwickshire College of Further Education
South West London College
Stourport-On-Severn High School
Stowmarket High School
Sir William Turner's Sixth Form College
The Victoria Community High School
Washington Youth Organisations Council
The Willink School
Wilson's School, Wallington
Whitefield Fishponds School
Wombwell High School
Mr. J. D. Wooding
Wyre District Youth Committee
Mrs. C. Yellow
Miss M. Young
Young Men's Christian Association

(b) Others

Mr. T. M. Aldridge
The Right Honourable Sir John Arnold, President of the Family Division
Association of County Courts
Professor P. S. Atiyah
Mr. Registrar Bayne-Powell
Mr. H. Beale
The Building Societies' Association
The Children's Legal Centre
Consumer Credit Trade Association
Department of Health and Social Security
Department of Trade
Finance Houses Association
Industrial Life Offices' Association
The Institute of Chartered Accountants in England and Wales
The Institute of Legal Executives
Mr. R. L. Jones
Mr. J. F. Kelemen
The Law Society
The Life Offices Association
Lord Chancellor's Department
Mr. P. B. Matthews
National Association for the Care and Resettlement of Offenders
The National Consumer Association
North Wiltshire District Youth and Community Service
Mr. A. F. Reekie
Review of Investor Protection
The Senate of the Inns of Court and the Bar
The Society of Conservative Lawyers
Master Warren
Welsh Consumer Council
Mr. J. S. Welsh
Women's National Commission

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