



# Children and Young Persons (Scotland) Act 1937

1937 CHAPTER 37 1 Edw 8 and 1 Geo 6

## PART II

### PREVENTION OF CRUELTY AND EXPOSURE TO MORAL AND PHYSICAL DANGER

#### *Offences*

#### 12 Cruelty to persons under sixteen.

- (1) If any person who has attained the age of sixteen years and has the custody, charge, or care of any child or young person under that age, wilfully assaults, ill-treats, neglects, abandons, or exposes him, or causes or procures him to be assaulted, ill-treated, neglected, abandoned, or exposed, in a manner likely to cause him unnecessary suffering or injury to health (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement), that person shall be guilty of an offence, and shall be liable—
  - (a) on conviction on indictment, to a fine . . . <sup>F1</sup>, or alternatively, or in default of payment of such a fine, or in addition thereto, to imprisonment for any term not exceeding [<sup>F2</sup>ten]years;
  - (b) on summary conviction, to a fine not exceeding [<sup>F3</sup>£400], or alternatively, or in default of payment of such a fine, or in addition thereto, to imprisonment for any term not exceeding six months.
- (2) For the purposes of this section—
  - (a) a parent or other person legally liable to maintain a child or young person shall be deemed to have neglected him in a manner likely to cause injury to his health if he has failed to provide adequate food, clothing, medical aid or lodging for him, or if, having been unable otherwise to provide such food, clothing, medical aid or lodging, he has failed to take steps to procure it to be provided under [<sup>F4</sup>the enactments applicable in that behalf];

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- (b) where it is proved that the death of a child under three years of age was caused by suffocation (not being suffocation caused by disease or the presence of any foreign body in the throat or air passages of the child) while the child was in bed with some other person who has attained the age of sixteen years, that other person shall, if he was, when he went to bed, under the influence of drink, be deemed to have neglected the child in a manner likely to cause injury to his health.
- (3) A person may be convicted of an offence under this section—
  - (a) notwithstanding that actual suffering or injury to health, or the likelihood of actual suffering or injury to health, was obviated by the action of another person;
  - (b) notwithstanding the death of the child or young person in question.
- (4) Where any person who has attained the age of sixteen years is tried on indictment for the culpable homicide of a child or young person under the age of sixteen years of whom he had the custody, charge, or care, it shall be lawful for the jury, if they are satisfied that he is guilty of an offence under this section, to find him guilty of that offence.
- (5) ..... F5
- (6) ..... F5
- (7) Nothing in this section shall be construed as affecting the right of any parent, teacher, or other person having the lawful control or charge of a child or young person to administer punishment to him.

**Textual Amendments**

**F1** Words repealed by [Children Act 1975 \(c. 72\), Sch. 4 Pt. III](#)

**F2** Word substituted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\), s. 45\(1\)\(2\)](#)

**F3** Words substituted by [Children Act 1975 \(c. 72\), Sch. 3 para. 2](#)

**F4** Words Substuted by [S.I. 1951/174 \(1951 I, p. 1369\), Sch.](#)

**F5** [S. 12\(5\)\(6\)](#) repealed by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\), s. 170\(2\), Sch. 16](#)

**13, 14.** ..... F6

**Textual Amendments**

**F6** [Ss. 13, 14](#) repealed by [Sexual Offences \(Scotland\) Act 1976 \(c. 67\), s. 20, Sch. 2](#)

**15 Causing or allowing persons under sixteen to be used for begging.**

- (1) If any person causes or procures any child or young person under the age of sixteen years or, having the custody, charge, or care of such a child or young person, allows him, to be in any street, premises, or place for the purpose of begging or receiving alms, or of inducing the giving of alms (whether or not there is any pretence of singing, playing, performing, offering anything for sale, or otherwise) he shall, on summary conviction, be liable to a fine not exceeding [F7level 2 on the standard scale],

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or alternatively, or in default of payment of such a fine, or in addition thereto, to imprisonment for any term not exceeding three months.

- (2) If a person having the custody, charge, or care of a child or young person is charged with an offence under this section, and it is proved that the child or young person was in any street, premises, or place for any such purpose as aforesaid, and that the person charged allowed the child or young person to be in the street, premises, or place, he shall be presumed to have allowed him to be in the street, premises, or place for that purpose unless the contrary is proved.
- (3) If any person while singing, playing, performing or offering anything for sale in a street or public place has with him a child who has been lent or hired out to him, the child shall, for the purposes of this section, be deemed to be in that street or place for the purpose of inducing the giving of alms.

**Textual Amendments**

**F7** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **s. 289G**

**16 Giving exciseable liquor to children under five.**

If any person gives, or causes to be given, to any child under the age of five years any exciseable liquor, except upon the order of a duly qualified medical practitioner, or in case of sickness, apprehended sickness, or other urgent cause, he shall, on summary conviction, be liable to a fine not exceeding [<sup>F8</sup>level 1 on the standard scale].

**Textual Amendments**

**F8** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **s. 289F, 289G**

**17** ..... <sup>F9</sup>

**Textual Amendments**

**F9** **S. 17** repealed by [Licensing \(Scotland\) Act 1959 \(c. 51\)](#), **Sch. 12**

**18 Sale of tobacco, &c. to persons under sixteen.**

- (1) Any person who sells to a person apparently under the age of sixteen years any tobacco or cigarette papers, whether for his own use or not, shall be liable, on summary conviction, in the case of a first offence to a fine not exceeding [<sup>F10</sup>level 3 on the standard scale], in the case of a second offence to a fine not exceeding [<sup>F10</sup>level 3 on the standard scale], and in the case of a third or subsequent offence to a fine not exceeding [<sup>F10</sup>level 3 on the standard scale]:

... <sup>F11</sup>

- (2) If on application to a court of summary jurisdiction it is proved to the satisfaction of the court that any automatic machine for the sale of tobacco kept on any premises

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is being extensively used by persons apparently under the age of sixteen years, the court [<sup>F12</sup>shall] order the owner of the machine, or the person on whose premises the machine is kept, to take such precautions to prevent the machine being so used as may be specified in the order or, if necessary, to remove the machine, within such time as may be specified in the order, and if any person against whom such an order has been made fails to comply therewith, he shall be liable, on summary conviction, to a fine not exceeding [<sup>F13</sup>level 3 on the standard scale], and to a further fine not exceeding [<sup>F14</sup>ten] pounds for each day during which the offence continues.

- (3) It shall be the duty of a constable and of a park-keeper being in uniform to seize any tobacco or cigarette papers in the possession of any person apparently under the age of sixteen years whom he finds smoking in any street or public place, and any tobacco or cigarette papers so seized shall be disposed of, if seized by a constable, in such manner as the police authority may direct, and if seized by a park-keeper, in such manner as the authority or person by whom he was appointed may direct.
- (4) Nothing in this section shall make it an offence to sell tobacco or cigarette papers to, or shall authorise the seizure of tobacco or cigarette papers in the possession of, any person who is at the time employed by a manufacturer of or dealer in tobacco, either wholesale or retail, for the purposes of his business, or is a boy messenger in uniform in the employment of a messenger company and employed as such at the time.
- (5) For the purposes of this section the expression “tobacco” includes cigarettes [<sup>F15</sup>, any product containing tobacco and intended for oral or nasal use]and smoking mixtures intended as a substitute for tobacco, and the expression “cigarettes” includes cut tobacco rolled up in paper, tobacco leaf, or other material in such form as to be capable of immediate use for smoking.
- [<sup>F16</sup>(6) For the purposes of subsections (1) and (2) of this section, any substance sold in a container (whether sealed or not) shall, subject to subsections (7) to (9) of this section, be presumed to conform to the description of the substance on the container.
- (7) Where a prosecutor (within the meaning of section 462 of the Criminal Procedure (Scotland) Act 1975) intends to rely on subsection (6) of this section, he shall give notice of his intention to the accused or his agent not less than 14 days before the commencement of the trial.
- (8) The accused shall not be entitled to challenge the presumption in subsection (6) of this section, unless he or his agent gives notice to the said prosecutor of intention to do so not less than 7 days before the commencement of the trial.
- (9) A notice under subsection (7) or (8) of this section shall be by recorded delivery letter, and the execution of the recorded delivery shall be sufficient evidence of the date of posting and of intimation of the notice, which shall be presumed to have been intimated to the addressee on the day after the day on which it was posted, except that, in the case of a notice posted on a Friday or a Saturday, it shall be presumed to have been so intimated on the Monday next following.]

#### Textual Amendments

- F10** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **ss. 289E–289G**
- F11** Proviso repealed by [Protection of Children \(Tobacco\) Act 1986 \(c. 34 SIF 20\)](#), s. 2(1)(a)(2)
- F12** Word substituted by [Protection of Children \(Tobacco\) Act 1986 \(c. 34, SIF 20\)](#), s. 2(1)(b)(2)

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- F13** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **s. 289F**, 289G
- F14** Words substituted by [Children and Young Persons Act 1963 \(c. 37\)](#), **s. 32(b)** in relation to offences committed after 1.2.1964
- F15** Words inserted by [Protection of Children \(Tobacco\) Act 1986 \(c. 34, SIF 20\)](#), **s. 2(1)(c)**
- F16** [S. 18\(6\)–\(9\)](#) inserted by [Protection of Children \(Tobacco\) Act 1986 \(c. 34, SIF 20\)](#), **s. 2(1)(d)**

**19** ..... **F17**

**Textual Amendments**

- F17** [S. 19](#) repealed by [Consumer Credit Act 1974 \(c. 39, SIF 60\)](#), s. 192(1)(4), **Sch. 5**

**20** ..... **F18**

**Textual Amendments**

- F18** [S. 20](#) repealed by [Civic Government \(Scotland\) Act 1982 \(c. 45, SIF 81:2\)](#), s. 137, **Sch. 4**

**21 Punishment of vagrants preventing children from receiving education.**

- (1) If a person habitually wanders from place to place and takes with him any child who has attained the age of five years, [<sup>F19</sup>or any young person who has not attained the age at which under the enactments relating to education children cease to be of school age], he shall, unless he proves that the child [<sup>F20</sup>or young person is not, by being so taken with him, prevented from receiving efficient education suitable to his age, ability and aptitude, be liable on conviction by a court of summary jurisdiction to a fine not exceeding [<sup>F21</sup>level 1 on the standard scale].]
- (2) Any constable who finds a person wandering from place to place and taking a child [<sup>F19</sup>or young person] with him may, if he has reasonable ground for believing that the person is guilty of an offence under this section, apprehend him without a warrant and . . . <sup>F22</sup>
- (3) Without prejudice to the requirements of [<sup>F23</sup>the <sup>M1</sup>Education (Scotland) Act 1962], as to school attendance or to proceedings thereunder, this section shall not, during the months of April to September inclusive, apply to any child whose parent or guardian is engaged in a trade or business of such a nature as to require him to travel from place to place, if a certificate has been obtained that the child has made not less than two hundred attendances at a public school during the months of October to March immediately preceding.

**Textual Amendments**

- F19** Words inserted by [Education \(Scotland\) Act 1945 \(c. 37\)](#), **Sch. 4**
- F20** Words substituted by [Education \(Scotland\) Act 1945 \(c. 37\)](#), **Sch. 4**
- F21** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **s. 289F**, 289G

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- F22** Words repealed by [Social Work \(Scotland\) Act 1968 \(c. 49\)](#), s. 95, **Sch. 9 Pt. I**  
**F23** Words substituted by virtue of [Interpretation Act 1978 \(c. 30\)](#), s. 17(2)(a)

**Modifications etc. (not altering text)**

- C1** S. 21 amended by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21\)](#), ss. 168, 364

**Marginal Citations**

- M1** 1962 c. 47.

**22 Exposing children under seven to risk of burning.**

If any person who has attained the age of sixteen years, having the custody, charge, or care of any child under the age of seven years, allows the child to be in any room containing an open fire grate not sufficiently protected to guard against the risk of his being burnt or scalded without taking reasonable precautions against that risk, and by reason thereof the child is killed or suffers serious injury, he shall on summary conviction be liable to a fine not exceeding [<sup>F24</sup>level 1 on the standard scale]:

Provided that neither this section, nor any proceedings taken thereunder, shall affect any liability of any such person to be proceeded against by indictment for any indictable offence.

**Textual Amendments**

- F24** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), s. 289G

**23 Failing to provide for safety of children at entertainments.**

- (1) Where there is provided in any building an entertainment for children, or an entertainment at which the majority of the persons attending are children, then, if the number of children attending the entertainment exceeds one hundred, it shall be the duty of the person providing the entertainment to station and keep stationed wherever necessary a sufficient number of adult attendants, properly instructed as to their duties, to prevent more children or other persons being admitted to the building, or to any part thereof, than the building or part can properly accommodate, and to control the movement of the children and other persons admitted while entering and leaving the building or any part thereof, and to take all other reasonable precautions for the safety of the children.
- (2) Where the occupier of a building permits, for hire or reward, the building to be used for the purpose of an entertainment, he shall take all reasonable steps to secure the observance of the provisions of this section.
- (3) If any person on whom any obligation is imposed by this section fails to fulfil that obligation, he shall be liable, on summary conviction, to a fine not exceeding, in the case of a first offence, fifty pounds, and in the case of a second or subsequent offence one hundred pounds, and also, if the building in which the entertainment is given is licensed . . . <sup>F25</sup>under any of the enactments relating to the licensing of theatres and of houses and other places for music or dancing, the licence shall be liable to be revoked by the authority by whom the licence was granted.

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(4) A constable may enter any building in which he has reason to believe that such an entertainment as aforesaid is being, or is about to be, provided, with a view to seeing whether the provisions of this section are carried into effect, and an officer authorised for the purpose by an authority by whom licences are granted under any of the enactments referred to in the last foregoing subsection shall have the like power of entering any building so licensed by that authority.

(5) ..... F26

(6) This section shall not apply to any entertainment given in a private dwelling-house.

**Textual Amendments**

**F25** Words repealed by [Cinemas Act 1985 \(c. 13, SIF 45A\)](#), s. 24(2), **Sch. 3**

**F26** [S. 23\(5\)](#) repealed by [Children Act 1948 \(c. 43\)](#), s. 60, **Sch. 4 Pt. I**

**24, 25.** ..... F27

**Textual Amendments**

**F27** [Ss. 24, 25, 39–45, 47–55, 57\(1\)\(2\), 58, 59\(2\)–\(4\), 63, 67, 103, Sch. 1](#) repealed by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21\)](#), s. 460, **Sch. 10 Pt. I**

**26** ..... F28

**Textual Amendments**

**F28** [S. 26](#) repealed by [Criminal Procedure \(Scotland\) Act 1938 \(c. 48\)](#), **s. 11(2)**

*Supplemental*

**27 Interpretation of Part II.**

For the purposes of this Part of this Act—

Any person who is the parent or legal guardian of a child or young person or who is legally liable to maintain him shall be presumed to have the custody of him, and as between father and mother the father shall not be deemed to have ceased to have the custody of him by reason only that he has deserted, or otherwise does not reside with, the mother and the child or young person;

Any person to whose charge a child or young person is committed by any person who has the custody of him shall be presumed to have charge of the child or young person;

Any other person having actual possession or control of a child or young person shall be presumed to have the care of him.

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