



Breastfeeding etc. (Scotland) Act 2005

2005 asp 1

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 18th November 2004 and received Royal Assent on 18th January 2005

An Act of the Scottish Parliament to make it an offence to prevent or stop a person in charge of a child who is otherwise permitted to be in a public place or licensed premises from feeding milk to that child in that place or on those premises; to make provision in relation to the promotion of breastfeeding; and for connected purposes.

1 Offence of preventing or stopping a child from being fed milk

- (1) Subject to subsection (2), it is an offence deliberately to prevent or stop a person in charge of a child from feeding milk to that child in a public place or on licensed premises.
- (2) Subsection (1) does not apply if the child, at the material time, is not lawfully permitted to be in the public place or on the licensed premises otherwise than for the purpose of being fed milk.
- (3) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (4) In this section—
 - “child” means a person who has not yet attained the age of two years;
 - “feeding” includes—
 - (a) breastfeeding; and
 - (b) feeding from a bottle or other container;
 - “licensed premises” means premises licensed under—
 - (a) section 12 of the Theatres Act 1968 (c. 54);
 - (b) Part II of the Licensing (Scotland) Act 1976 (c. 66);
 - (c) Part II of the Civic Government (Scotland) Act 1982 (c. 45); or
 - (d) section 1 of the Cinemas Act 1985 (c. 13);
 - “milk” means breastmilk, cow’s milk or infant formula;
 - “public place” means any place to which, at the material time, the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission.

2 Vicarious liability

- (1) Anything done by a person in the course of that person's employment shall, in any proceedings brought under this Act, be treated for the purposes of this Act as done also by that person's employer, whether or not it was done with the employer's knowledge or approval.
- (2) Anything done by a person as agent for another person with the authority (whether express or implied and whether precedent or subsequent) of that other person shall, in any proceedings brought under this Act, be treated for the purposes of this Act as done also by that other person.
- (3) In proceedings brought under this Act against an employer in respect of an offence under section 1 alleged to have been done by an employee of the employer, it shall be a defence for the employer to prove that the employer took such steps as were reasonably practicable to prevent the employee from committing such an offence in the course of the employee's employment.
- (4) In this section, "employment" means employment under a contract of service or of apprenticeship or a contract personally to do any work; and related expressions are to be construed accordingly.

3 Offence of bodies corporate and partnerships

- (1) If an offence under section 1 committed by a body corporate is proved—
 - (a) to have been committed with the consent or connivance of an officer; or
 - (b) to be attributable to any neglect on that officer's part,the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) In subsection (1), "officer", in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.
- (3) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with that member's functions of management as if the member were a director of the body corporate.
- (4) If any offence under any provision of this Act committed by a partnership is proved—
 - (a) to have been committed with the consent or connivance of a partner; or
 - (b) to be attributable to any neglect on that partner's part,the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.
- (5) In subsection (4), "partner" includes a person purporting to act as a partner.

4 Promotion and support of breastfeeding

After section 38 of the National Health Service (Scotland) Act 1978 (c. 29) insert—

“38A Breastfeeding

- (1) The Scottish Ministers shall make arrangements, to such extent as they consider necessary to meet all reasonable requirements, for the purpose of supporting and encouraging the breastfeeding of children by their mothers.
- (2) The Scottish Ministers shall have the power to disseminate, by whatever means, information promoting and encouraging breastfeeding.”.

5 Commencement and short title

- (1) Sections 1 to 4 of this Act shall come into force two months after the date of Royal Assent or on such earlier day as the Scottish Ministers may, by order made by statutory instrument, appoint.
- (2) This Act may be cited as the Breastfeeding etc. (Scotland) Act 2005.