



Children and Young Persons (Scotland) Act 1937

1937 CHAPTER 37 1 Edw 8 and 1 Geo 6

PART III **S**

EMPLOYMENT

General Provisions as to Employment

28 Restrictions on employment of children. **S**

- (1) Subject to the provisions of this section and of any byelaws made thereunder, no child shall be employed—
- [^{F1}(a) so long as he is under the age of [^{F2}fourteen years];]
 - [^{F3}(aa) to do any work other than light work; or]
 - (b) before the close of school hours on any day on which he is under obligation to attend school; or
 - [^{F4}(c) before seven o'clock in the morning or after seven o'clock in the evening on any day; or]
 - (d) for more than two hours on any day on which he is under obligation to attend school; or
 - [^{F5}(da) for more than twelve hours in any week in which he is required to attend school; or]
 - (e) for more than two hours on any Sunday; or
 - [^{F6}(f)
 - [^{F7}(g) for more than eight hours or, if he is under the age of fifteen years, for more than five hours in any day—
 - (i) on which he is not required to attend school, and
 - (ii) which is not a Sunday; or

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- (h) for more than thirty-five hours or, if he is under the age of fifteen years, for more than twenty-five hours in any week in which he is not required to attend school; or
 - (i) for more than four hours in any day without a rest break of one hour; or
 - (j) at any time in a year unless at that time he has had, or could still have, during a period in the year in which he is not required to attend school, at least two consecutive weeks without employment.]
- (2) An education authority may make byelaws with respect to the employment of children, and any such byelaws may distinguish between children of different ages and sexes and between different localities, trades, occupations and circumstances, and may contain provisions—
- (a) authorising—
 - [^{F8}(i) the employment [^{F9}on an occasional basis] of children [^{F10}aged thirteen years] (notwithstanding anything in paragraph (a) of the last foregoing subsection) by their parents or guardians in light agricultural or horticultural work];
 - [^{F11}(ia) the employment of children aged thirteen years (notwithstanding anything in paragraph (a) of the last foregoing subsection) in categories of light work specified in the byelaw.]
 - (ii) the employment of children (notwithstanding anything in paragraph (b) of the last foregoing subsection) for not more than one hour before the commencement of school hours on any day on which they are under obligation to attend school;
 - (b) prohibiting absolutely the employment of children in any specified occupation;
 - (c) prescribing—
 - (i) the age below which children are not to be employed;
 - (ii) the number of hours in each day, or in each week, for which, and the times of day at which, they may be employed;
 - (iii) the intervals to be allowed to them for meals and rest;
 - (iv) the holidays or half-holidays to be allowed to them;
 - (v) any other conditions to be observed in relation to their employment;
- so, however, that no such byelaws shall modify the restrictions contained in the last foregoing subsection save in so far as is expressly permitted by paragraph (a) of this subsection, and any restriction contained in any such byelaws shall have effect in addition to the said restrictions.

[^{F12}(2A) In this section—

“light work” means work which, on account of the inherent nature of the tasks which it involves and the particular conditions under which they are performed—

- (a) is not likely to be harmful to the safety, health or development of children; and
- (b) is not such as to be harmful to their attendance at school or to their participation in work experience in accordance with section 123 of the Education (Scotland) Act 1980 ^{F13}, or their capacity to benefit from the instruction received or, as the case may be, the experience gained;

“week” means any period of seven consecutive days; and

“year”, except in expressions of age, means a period of twelve months beginning with 1st January.]

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- [^{F14}(3) Nothing in this section or in any byelaw made under this section shall prevent a child from [^{F15}doing anything]—
- (a) under the authority of a licence granted under this Part of this Act; or
 - (b) in a case where by virtue of section 37(3) of the ^{M1}Children and Young Persons Act 1963 no licence under that section is required for him to [^{F16}do it].]

Textual Amendments

- F1** S. 28(1)(a) substituted by [Children Act 1972 \(c. 44\), s. 1\(2\)](#)
- F2** Words in s. 28(1)(a) substituted (4.8.1998) by [S.I. 1998/276, reg. 8\(1\)\(2\)\(a\)](#)
- F3** S. 28(1)(aa) inserted (4.8.1998) by [S.I. 1998/276, reg. 8\(1\)\(2\)\(b\)](#)
- F4** S. 28(1)(c) substituted by [Children and Young Persons Act 1963 \(c. 37\), s. 34](#)
- F5** [S. 28\(1\)\(da\)](#) inserted (18.4.2006) by [The Children \(Protection at Work\) \(Scotland\) Regulations 2006 \(S.S.I. 2006/140\), regs. 1\(1\), 2](#)
- F6** S. 28(1)(f) omitted (4.8.1998) by virtue of [S.I. 1998/276, reg. 8\(1\)\(2\)\(c\)](#) and repealed (31.12.1998) by [S.I. 1998/2857, reg. 1\(2\)\(b\)](#)
- F7** S. 28(1)(g)-(j) inserted (4.8.1998) by [S.I. 1998/276, reg. 8\(1\)\(2\)\(d\)](#)
- F8** S. 28(2)(a)(i) substituted by [Children Act 1972 \(c. 44\), s. 1\(2\)](#)
- F9** Words in s. 28(2)(a)(i) inserted (4.8.1998) by [S.I. 1998/276, reg. 8\(1\)\(3\)\(a\)](#)
- F10** Words in s. 28(2)(a)(i) substituted (9.6.2000) by [S.S.I. 2000/149, reg. 2\(1\)](#)
- F11** S. 28(2)(ia) inserted (4.8.1998) by [S.I. 1998/276, reg. 8\(1\)\(3\)\(b\)](#)
- F12** S. 28(2A) inserted (4.8.1998) by [1998/276, reg. 8\(1\)\(4\)](#)
- F13** Section 123 was amended by the [Self-Governing Schools etc. \(Scotland\) Act 1989 \(c.39\), Schedule 10, paragraph 8\(21\)](#).
- F14** S. 28(3) substituted by [Children and Young Persons Act 1963 \(c. 37\), Sch. 3 para. 29\(2\)](#)
- F15** Words in s. 28(3) substituted (4.8.1998) by [1998/276, reg. 8\(5\)\(a\)](#)
- F16** Words in s. 28(3)(b) substituted (4.8.1998) by [1998/276, reg. 8\(5\)\(b\)](#)

Marginal Citations

- M1** [1963 c. 37](#).

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Textual Amendments

- F17** [S. 29](#) repealed by [Employment Act 1989 \(c. 38, SIF 43:1\), ss. 10\(1\), 29\(4\), Sch. 3 Pt. I, Sch. 7 Pt. II](#)

30 **Street trading.** **S**

- [^{F18}(1) Subject to subsection (2) of this section, no child shall engage or be employed in street trading.]
- (2) An education authority may make byelaws [^{F19}authorising children who have attained the age of fourteen years to be employed by their parents in street trading to such extent as may be specified in the byelaws, and for regulating street trading under the byelaws by persons who are so authorised to be employed in such trading;]and byelaws so made may distinguish between persons of different ages and sexes and between different localities, and may contain provisions—

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- (a) forbidding any such person to engage or be employed in street trading unless he holds a licence granted by the authority, and regulating the conditions on which such licences may be granted, suspended, and revoked;
- ^{F20}(b)
- (c) requiring such persons so engaged or employed to wear badges;
- (d) regulating in any other respect the conduct of such persons while so engaged or employed.

^{F21}(3) Byelaws made under subsection (2) shall contain provisions determining the days and hours during which, and the places at which, such persons may engage or be employed in street trading.]

Textual Amendments

- F18** S. 30(1) substituted by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), s. 10(2), **Sch. 3 Pt. III para. 9(a)**
- F19** Words substituted by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), s. 10(2), **Sch. 3 Pt. III para. 9(b)**
- F20** S. 30(2)(b) omitted (9.6.2000) by virtue of [S.S.I. 2000/149](#), **reg. 2(2)(a)**
- F21** S. 30(3) inserted (9.6.2000) by [S.S.I. 2000/149](#), **reg. 2(2)(b)**

Modifications etc. (not altering text)

- C1** S. 30 restricted by [Children and Young Persons Act 1963 \(c. 37\)](#), s. 35(2)

31 Penalties and legal proceedings in respect of general provisions as to employment. **S**

- (1) If a person is employed in contravention of any of the foregoing provisions of this Part of this Act, or of the provisions of any byelaw [^{F22}or regulations] made thereunder, the employer and any person (other than the person employed) to whose act or default the contravention is attributable shall be liable on conviction by a court of summary jurisdiction to a fine not exceeding [^{F23}level 3 on the standard scale]or, in the case of a second or subsequent offence, not exceeding [^{F23}level 3 on the standard scale]:

Provided that, if proceedings are brought against the employer, the employer, upon complaint duly laid by him and on giving to the prosecutor not less than three days' notice of his intention, shall be entitled to have any person (other than the person employed) to whose act or default he alleges that the contravention was due, brought before the court as a party to the proceedings, and if, after the contravention has been proved, the employer proves to the satisfaction of the court that the contravention was due to the act or default of the said other person, that person may be convicted of the offence; and if the employer further proves to the satisfaction of the court that he has used all due diligence to secure that the provisions in question should be complied with, he shall be acquitted of the offence.

- (2) Where an employer seeks to avail himself of the proviso to the last foregoing subsection—
- (a) the prosecutor shall have the right to cross-examine him, if he gives evidence, and any witness called by him in support of his charge against the other person, and to call rebutting evidence; and
 - (b) the court may make such order as it thinks fit for the payment of expenses by any party to the proceedings to any other party thereto.

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[^{F24}(2A) Where a person is charged under this section with contravening section 28(1)(j) of this Act the proviso in subsection (1) of this section shall not apply, but it shall be a defence for him to prove that he used all due diligence to secure that section 28(1)(j) should be complied with.]

(3) A [^{F25}child], who engages in street trading in contravention of the provisions of the last foregoing section, or of any byelaw made thereunder, shall be liable on conviction by a court of summary jurisdiction to a fine not exceeding [^{F23}level 1 on the standard scale], or in the case of a second or subsequent offence, not exceeding [^{F23}level 1 on the standard scale].

Textual Amendments

F22 Words inserted (prosp.) by Employment of Children Act 1973 (c. 24), s. 3(4), **Sch. 1 Pt. I para. 6(a)**

F23 Words substituted by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), **ss. 289E–289G**

F24 S. 31(2A) inserted (4.8.1998) by S.I. 1998/276, **reg. 9**

F25 Word substituted by Employment Act 1989 (c. 38, SIF 43:1), s. 10(2), **Sch. 3 Pt. III para. 10**

Modifications etc. (not altering text)

C2 S. 31(1) extended by Employment of Women, Young Persons, and Children Act 1920 (c. 65, SIF 43:4), s. 1(6)(a) as substituted by Employment Act 1989 (c. 38, SIF 43:1), s. 29(3), **Sch. 6 para. 1(a)**

C3 S. 31(2) extended by Employment of Women, Young Persons, and Children Act 1920 (c. 65, SIF 43:4), s. 1(6)(a) as substituted by Employment Act 1989 (c. 38, SIF 43:1), s. 29(3), **Sch. 6 para. 1(a)**

Changes to legislation:

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