



# Children and Young Persons (Scotland) Act 1937

## 1937 CHAPTER 37

### PART IV

#### PROTECTION OF CHILDREN AND YOUNG PERSONS IN RELATION TO CRIMINAL PROCEEDINGS

##### *General Provisions as to Preliminary Proceedings*

#### **39 Separation of children and young persons from adults in police station, courts, and c**

Arrangements shall be made for preventing a child or young person while detained in a police station, or while being conveyed to or from any criminal court, or while waiting before or after attendance in any criminal court, from associating with an adult (not being a relative) who is charged with any offence other than an offence with which the child or young person is jointly charged, and for ensuring that a girl (being a child or young person) shall, while so detained, being conveyed, or waiting, be under the care of a woman.

#### **40 Liberation or detention of children and young persons arrested**

(1) Where a person apparently under the age of seventeen years is apprehended, with or without warrant, and cannot be brought forthwith before a court of summary jurisdiction, a superintendent or inspector of police, or other officer of police of equal or superior rank, or the officer in charge of the police station to which he is brought, shall inquire into the case, and may liberate him on an obligation that he will attend at the hearing of the charge being entered into by him or his parent or guardian or on bail being found by him or his parent or guardian, for such an amount as will, in the opinion of the officer, secure his attendance at the hearing of the charge, and shall so liberate him unless—

(a) the charge is one of homicide or other grave crime; or

- (b) it is necessary in his interest to remove him from association with any reputed criminal or prostitute; or
  - (c) the officer has reason to believe that his liberation would defeat the ends of justice.
- (2) Where a person apparently under the age of seventeen years having been apprehended is not so liberated as aforesaid, the officer of police shall cause him to be detained in a remand home until he can be brought before a court of summary jurisdiction, unless the officer certifies—
- (a) that it is impracticable to do so; or
  - (b) that he is of so unruly a character that he cannot safely be so detained; or
  - (c) that by reason of his state of health or of his mental or bodily condition it is inadvisable so to detain him;
- and the certificate shall be produced to the court before which he is brought.

#### **41 Committal to custody in remand home**

- (1) Any court, on remanding or committing for trial a child or young person who is not liberated on bail, shall, instead of committing him to prison, commit him to custody in a remand home named in the commitment, to be there detained for the period for which he is remanded or until he is liberated in due course of law :

Provided that, in the case of a young person, it shall not be obligatory on the court so to commit him if the court certifies that he is of so unruly a character that he cannot safely be so committed, or that he is of so depraved a character that he is not a fit person to be so detained.

- (2) A commitment under this section may be varied, or, in the case of a young person who proves to be of so unruly a character that he cannot safely be detained in such custody, or to be of so depraved a character that he is not a fit person to be so detained, revoked, by the court which made the order, or if application cannot conveniently be made to that court, by a court of summary jurisdiction having jurisdiction in the place where the court which made the order sat, and if it is revoked the young person may be committed to prison.

#### **42 Attendance at court of parent of child or young person charged with an offence, and c**

- (1) Where a child or young person is charged with any offence or is for any other reason brought before a court, his parent or guardian may in any case, and shall, if he can be found and resides within a, reasonable distance, be required to attend at the court before which the case is heard or determined during all the stages of the proceedings, unless the court is satisfied that it would be unreasonable to require his attendance.
- (2) Where the child or young person is arrested or taken to a place of safety, the constable by whom he is arrested or the officer of police in charge of the police station to which he is brought, or the person by whom he is taken to the place of safety, as the case may be, shall cause the parent or guardian of the child or young person, if he can be found, to be warned to attend at the court before which the child or young person will appear.
- (3) For the purpose of enforcing the attendance of a parent or guardian and enabling him to take part in the proceedings and enabling orders to be made against him, rules may be made under section sixteen of the Summary Jurisdiction (Scotland) Act, 1908, for

applying, with the necessary adaptations and modifications, such of the provisions of the Summary Jurisdiction (Scotland) Acts as appear appropriate for the purpose.

- (4) The parent or guardian whose attendance shall be required under this section shall be the parent or guardian having the actual possession and control of the child or young person :

Provided that, if that person is not the father, the attendance of the father may also be required.

- (5) The attendance of the parent of a child or young person shall not be required under this section in any case where the child or young person was before the institution of the proceedings removed from the custody or charge of his parent by an order of a court.

#### **43 Notice to probation officer and education authority of charges against and applications relating to children and young persons**

- (1) Where a child or young person is to be brought before a court of summary jurisdiction in respect of an offence alleged to have been committed by him, or is to be brought before a juvenile court as being in need of care or protection, the responsible person (as hereinafter defined) shall forthwith notify the day and hour when, and the nature of the charge or other grounds on which, the child or young person is to be brought before the court—

- (a) to the probation officer, or one of the probation officers, for the probation area in which the court will sit; and
- (b) to the education authority for the area in which the child or young person is resident, or, if it is not known where he is resident, to the education authority for the area, or for any one of the areas, in which the offence is alleged to have been committed or the circumstances justifying an application to the court are alleged to have arisen:

Provided that no such notification need be given to an education authority where the child or young person is charged or brought before the court by an education or poor law authority.

For the purposes of this subsection, the expression "responsible person" means, in a case where the child or young person is accused of an offence, the chief constable, and in any other case, the person bringing the child or young person before the court.

- (2) An education authority who have received a notification under the last foregoing subsection, and an education or poor law authority who themselves charge any child or young person with any offence, or bring any child or young person before a juvenile court as being in need of care or protection shall, except in cases which appear to them to be of a trivial nature, make such investigations and render available to the court such information as to the home surroundings, school record, health, and character of the child or young person and, in proper cases, as to available approved schools, as appear to them to be likely to assist the court:

Provided that an education authority shall be under no obligation to make investigations as to the home surroundings of children or young persons in any probation area in which by direction of the probation committee arrangements have been made for such investigations to be made by a probation officer.

*General Provisions as to Proceedings in Court*

**44 Prohibition on children being present in court during the trial of other persons**

No child (other than an infant in arms) shall be permitted to be present in court during the trial of any other person charged with an offence, or during any proceedings preliminary thereto, except during such time as his presence is required as a witness or otherwise for the purposes of justice; and any child present in court when under this section he is not to be permitted to be so shall be ordered to be removed:

Provided that this section shall not apply to messengers, clerks, and other persons required to attend at any court for purposes connected with their employment.

**45 Power to clear court while child or young person is giving evidence in certain cases**

- (1) Where, in any proceedings in relation to an offence against, or any conduct contrary to, decency or morality, a person who, in the opinion of the court, is a child or young person is called as a witness, the court may direct that all or any persons, not being members or officers of the court or parties to the case, their counsel or solicitors, or persons otherwise directly concerned in the case, be excluded from the court during the taking of the evidence of that witness:

Provided that nothing in this section shall authorise the exclusion of bona fide representatives of a newspaper or news agency.

- (2) The powers conferred on a court by this section shall be in addition and without prejudice to any other powers of the court to hear proceedings in camera.

**46 Power to prohibit publication of certain matter in newspapers**

- (1) In relation to any proceedings in any court which arise out of any offence against, or any conduct contrary to, decency or morality, the court may direct that—

(a) no newspaper report of the proceedings shall reveal the name, address, or school, or include any particulars calculated to lead to the identification, of any child or young person concerned in the proceedings, either as being the person against or in respect of whom the proceedings are taken, or as being a witness therein;

(b) no picture shall be published in any newspaper as being or including a picture of any child or young person so concerned in the proceedings as aforesaid;

except in so far (if at all) as may be permitted by the direction of the court.

- (2) Any person who publishes any matter in contravention of any such direction shall on summary conviction be liable in respect of each offence to a fine not exceeding fifty pounds.

*Special Procedure with regard to Offences specified in First Schedule*

**47 Warrant to search for or remove a child or young person**

- (1) If on an application to a justice by any person who, in the opinion of the justice, is acting in the interests of a child or young person, it appears to the justice on information on oath that there is reasonable cause to suspect—
  - (a) that the child or young person has been or is being assaulted, ill-treated, or neglected in any place within the jurisdiction of the justice, in a manner likely to cause him unnecessary suffering, or injury to health; or
  - (b) that any offence mentioned in the First Schedule to this Act has been or is being committed in respect of the child or young person,the justice may issue a warrant authorising any constable named therein to search for the child or young person, and, if it is found that he has been or is being assaulted, ill-treated, or neglected in manner aforesaid, or that any such offence as aforesaid has been or is being committed in respect of him, to take him to and detain him in a place of safety, until he can be brought before a juvenile court, or authorising any constable to remove him with or without search to a place of safety and detain him there until he can be brought before a juvenile court.
- (2) A justice issuing a warrant under this section may by the same warrant cause any person accused of any offence in respect of the child or young person to be apprehended and brought before the sheriff, and proceedings to be taken against him according to law.
- (3) Any constable authorised by warrant under this section to search for any child or young person, or to remove any child or young person with or without search, may enter (if need be by force) any house, building, or other place specified in the warrant, and may remove him therefrom.
- (4) Every warrant issued under this section shall be addressed to and executed by a constable, who shall be accompanied by the person making the application if that person so desires, unless the justice by whom the warrant is issued otherwise directs, and may also, if the justice by whom the warrant is issued so directs, be accompanied by a duly qualified medical practitioner.
- (5) It shall not be necessary in any application, information or warrant under this section to name the child or young person.

**48 Power to proceed with case in absence of child or young person**

Where in any proceedings with relation to any of the offences mentioned in the First Schedule to this Act, the court is satisfied that the attendance before the court of any child or young person in respect of whom the offence is alleged to have been committed is not essential to the just hearing of the case, the case may be proceeded with and determined in the absence of the child or young person.

*Principles to be observed by all Courts in dealing with Children and Young Persons*

**49 General considerations**

- (1) Every court in dealing with a child or young person who is brought before it, either as being in need of care or protection or as an offender or otherwise, shall have regard

to the welfare of the child or young person and shall in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training.

- (2) A court shall not order a child under the age of ten years to be sent to an approved school unless for any reason, including the want of a fit person of his own religious persuasion who is willing to undertake the care of him, the court is satisfied that he cannot suitably be dealt with otherwise.

### *Juvenile Courts*

## **50 Jurisdiction of juvenile courts**

- (1) Courts of summary jurisdiction constituted in accordance with the provisions of the next following section shall sit so often as is necessary for the following purposes, that is to say—
- (i) to hear charges against children and young persons;
  - (ii) to hear proceedings under section seventy of the Education (Scotland) Act, 1872, or under section four of the Day Industrial Schools (Scotland) Act, 1893;
  - (iii) to exercise any other jurisdiction conferred on juvenile courts by this or any other Act;

and such courts so constituted and sitting for any such purpose shall be known as juvenile courts and, in whatever place sitting, shall for the purposes of such charges and proceedings have the like jurisdiction as the sheriff sitting as a court of summary jurisdiction, but as regards power to award imprisonment, to impose a fine or to ordain the finding of caution and in all other respects shall be deemed to be justice of the peace courts of summary jurisdiction.

A charge made jointly against a child or young person and a person who has attained the age of seventeen years shall not, for the purposes of this section, be treated as a charge against a child or young person.

- (2) Subject as hereinafter provided no such charge or proceeding as is mentioned in the last foregoing subsection shall be heard by a court of summary jurisdiction which is not a juvenile court :

Provided that—

- (i) this subsection shall not apply where a child or young person is charged with an offence, and a person who has attained the age of seventeen years is charged at the same time with aiding, abetting, causing, procuring, allowing or permitting that offence; and
  - (ii) nothing in this subsection shall affect the power of the Lord Advocate to order proceedings to be taken in the High Court of Justiciary or the sheriff court on any such charge as aforesaid.
- (3) A juvenile court shall have jurisdiction to make an adoption order under the Adoption of Children (Scotland) Act, 1930, if either the applicant or the child resides at the date of the application within the area for which the court acts, and the provisions of the said Act shall apply as regards the juvenile court in like manner as they apply as regards the sheriff court.

- (4) (a) This section shall not apply except in any area (being a county or a part of a county) to which the Secretary of State by order under his hand directs that the section shall apply. Any such order may be varied or revoked by a subsequent order.
- (b) In this subsection the expression " county" includes a county of a city, and any burgh (not being a county of a city) shall be deemed to be included in and form part of the county in which it is situated.
- (5) In any place in which this section does not apply, any power or duty conferred or imposed on a juvenile court may be exercised or performed by any court of summary jurisdiction having jurisdiction in that place, and the provisions of this Act with regard to juvenile courts (other than those relating to the constitution of such courts) shall apply to any court of summary jurisdiction sitting for the purpose of hearing any such charge or proceeding as is mentioned in subsection (1) of this section, and as regards any such place the expression " juvenile court" shall mean a court of summary jurisdiction sitting for such purpose.

## **51 Constitution of juvenile courts**

- (1) Subject to the provisions of the next following subsection, a panel of justices specially qualified for dealing with juvenile cases shall be formed for the purposes of this Act in every area in which section fifty of this Act applies, and no justice shall be qualified to sit as a member of a juvenile court unless he is a member of such a panel.
- (2) The Secretary of State, after considering any representations made to him by the justices for any such areas as aforesaid, may by order direct that there shall be only one panel for any two or more such areas and may by the same or a subsequent order provide for sittings of juvenile courts constituted from that panel being held at such places, whether within or without the area for which the court is for the time being acting, as may be specified in the order.

An order under this subsection may contain such supplemental, incidental and consequential provisions as appear to the Secretary of State to be necessary or proper for the purposes of the order, and may be varied or revoked by a subsequent order.

- (3) Rules made by the Lord Chancellor shall provide—
- (a) for the formation and periodical revision of panels of justices;
- (b) for limiting the number of justices who may sit as members of any juvenile court, and for the manner in which they are to be selected;
- (c) for one of the justices acting as chairman of the court and for the manner in which the chairman is to be selected.
- (4) Any rule purporting to be made by the Lord Chancellor under this section shall be laid before both Houses of Parliament as soon as may be after it is made, if Parliament be then sitting, or if Parliament be not then sitting, within one month after the commencement of the next Session of Parliament, and shall be judicially noticed.

## **52 Procedure in juvenile courts**

- (1) A juvenile court shall, subject as hereinafter provided, sit either in a different building or room from that in which sittings of courts other than juvenile courts are held, or on different days from those on which sittings of such other courts are held; and no person shall be present at any sitting of a juvenile court except—

- (a) members and officers of the court;
  - (b) parties to the case before the court, their solicitors and counsel, and witnesses and other persons directly concerned in that case;
  - (c) bona fide representatives of newspapers or news agencies;
  - (d) such other persons as the court may specially authorise to be present.
- (2) The Lord Justice General may make rules for regulating the procedure in juvenile courts, and such of the provisions of the Summary Jurisdiction (Scotland) Acts as regulate procedure shall have effect subject to any rules so made.

### **53 Miscellaneous provisions as to powers of juvenile and other courts**

- (1) A juvenile court sitting for the purpose of hearing a charge against, or an application relating to, a person who is believed to be a child or young person may, if it thinks fit to do so, proceed with the hearing and determination of the charge or application, notwithstanding that it is discovered that the person in question is not a child or young person.
- (2) Where in the course of any proceedings in any court of summary jurisdiction other than a juvenile court it appears that the person charged or to whom the proceedings relate is under the age of seventeen years, nothing in the foregoing provisions of this Part of this Act shall be construed as preventing the court, if it thinks fit so to do, from proceeding with the hearing and determination of those proceedings.
- (3) Where the court before which any person is bound by his bond under the Probation of Offenders Act, 1907, to appear is a juvenile court, the attainment by him of the age of seventeen years shall not deprive that court of jurisdiction to enforce his attendance and deal with him in respect of any failure to observe the conditions of his bond or of jurisdiction to vary or discharge the bond.
- (4) When a juvenile court has remanded a child or young person for information to be obtained with respect to him, any juvenile court acting for the same place—
- (a) may in his absence extend the period for which he is remanded, so, however, that he appears before a court or a justice at least once in every twenty-one days;
  - (b) when the required information has been obtained, may deal with him finally; and where the court by which he was originally remanded has recorded a finding that he is guilty of an offence charged against him, it shall not be necessary for any court which subsequently deals with him under this subsection to hear evidence as to the commission of that offence, except in so far as it may consider that such evidence will assist the court in determining the manner in which he should be dealt with.
- (5) No direction, whether contained in this or any other Act, that a charge shall be brought before a juvenile court, shall be construed as restricting the powers of any justice or justices to entertain an application for bailor for a remand, and to hear such evidence as may be necessary for that purpose.

### **54 Restrictions on newspaper reports of proceedings in juvenile courts**

- (1) Subject as hereinafter provided, no newspaper report of any proceedings in a juvenile court shall reveal the name, address or school, or include any particulars calculated to lead to the identification, of any child or young person concerned in those proceedings, either as being the person against or in respect of whom the proceedings are taken



or as being a witness therein, nor shall any picture be published in any newspaper as being or including a picture of any child or young person so concerned in any such proceedings as aforesaid :

Provided that the court or the Secretary of State may in any case, if satisfied that it is in the interests of justice so to do, by order dispense with the requirements of this section to such extent as may be specified in the order.

- (2) Any person who publishes any matter in contravention of this section shall on summary conviction be liable in respect of each offence to a fine not exceeding fifty pounds.

## **55 Age of criminal responsibility**

It shall be conclusively presumed that no child under the age of eight years can be guilty of any offence.

## **56 Restrictions on punishment of children and young persons**

- (1) A child shall not be ordered to be imprisoned or be sent to penal servitude for any offence, or be committed to prison in default of payment of a fine, damages, or expenses.
- (2) A young person shall not be sent to penal servitude for any offence.
- (3) A young person shall not be ordered to be imprisoned for an offence, or be committed to prison in default of payment of a fine, damages, or expenses, unless the court certifies that he is of so unruly a character that he cannot be detained in a remand home or that he is of so depraved a character that he is not a fit person to be so detained.

## **57 Punishment of certain grave crimes**

- (1) Sentence of death shall not be pronounced on or recorded against a person under the age of eighteen years, but in lieu thereof the court shall sentence him to be detained during His Majesty's pleasure, and, if so sentenced, he shall, notwithstanding anything in the other provisions of this Act, be liable to be detained in such place and under such conditions as the Secretary of State may direct.
- (2) Where a child or young person is convicted on indictment of an attempt to murder, or of culpable homicide, or of wounding with intent to do grievous bodily harm, and the court is of opinion that none of the other methods in which the case may legally be dealt with is suitable, the court may sentence the offender to be detained for such period as may be specified in the sentence; and where such a sentence has been passed, the child or young person shall, during that period, notwithstanding anything in the other provisions of this Act, be liable to be detained in such place and on such conditions as the Secretary of State may direct.
- (3) A person detained pursuant to the directions of the Secretary of State under this section shall, while so detained, be deemed to be in legal custody.
- (4) Any person so detained as aforesaid may, at any time, be discharged by the Secretary of State on licence.

Such a licence may be in such form and may contain such conditions as the Secretary of State may direct, and may at any time be revoked or varied by the Secretary of State.

Where a licence has been revoked, the person to whom the licence related shall return to such place as the Secretary of State may direct, and if he fails to do so may be apprehended without warrant and taken to that place.

**58 Substitution of custody in remand home for imprisonment**

Where a child or young person is found guilty of an offence punishable in the case of an adult with penal servitude or imprisonment, or where a child or young person would, if he were an adult, be liable to be imprisoned in default of payment of any fine, damages, or expenses, the court may, if it considers that none of the other methods by which the case may legally be dealt with is suitable, order that he be committed to custody in a remand home named in the order for such term as may be specified in the order, not exceeding the term for which he might, but for this Act, be ordered to be imprisoned or committed to prison, nor in any case exceeding one month.

**59 Power to order parent to pay fine, and c. instead of child or young person**

- (1) Where a child or young person is charged with an offence for the commission of which a fine, damages, or expenses may be imposed or awarded, if the court is of opinion that the case would be best met by the imposition or award of a fine, damages, or expenses, whether with or without any other punishment, the court may in any case, and shall if the offender is a child, order that the fine, damages, or expenses imposed or awarded be paid by the parent or guardian of the child or young person instead of by the child or young person, unless the court is satisfied that the parent or guardian cannot be found or that he has not conduced to the commission of the offence by neglecting to exercise due care of the child or young person.
- (2) In the case of a child or young person charged with any offence, the court may order his parent or guardian to give security for his good behaviour.
- (3) An order under this section may be made against a parent or guardian who, having been required to attend, has failed to do so, but, save as aforesaid, no such order shall be made without giving the parent or guardian an opportunity of being heard.
- (4) Any sums ordered under this section, or on forfeiture of any such security as aforesaid, to be paid by a parent or guardian may be recovered from him by civil diligence or imprisonment in like manner as if the order had been made on the conviction of the parent or guardian of the offence with which the child or young person was charged.

**60 Power of other courts to remit juvenile offenders to juvenile courts**

- (1) Any court by or before which a child or young person is found guilty of an offence other than homicide, may, if it thinks fit, remit the case to a juvenile court acting for the place where the offender was committed for trial, or, if he was not committed for trial, to a juvenile court acting either for the same place as the remitting court or for the place where the offender resides; and, where any such case is so remitted, the offender shall be brought before a juvenile court accordingly, and that court may deal with him in any way in which it might have dealt with him if he had been tried and found guilty by that court.
- (2) No appeal shall lie against an order remitting a case to a juvenile court under this section, but nothing in this subsection shall affect any right of appeal against the verdict or finding on which such an order is founded.

- (3) A court by which an order remitting a case to a juvenile court is made under this section may give such directions as appear to be necessary with respect to the custody of the offender or for his liberation on bail until he can be brought before the juvenile court, and shall cause to be transmitted to the clerk of the juvenile court a certificate setting out the nature of the offence and stating that the offender has been found guilty thereof, and that the case has been remitted for the purpose of being dealt with under this section.

**61 Power to send juvenile offenders to approved schools or to commit them to fit persons**

- (1) Any court by or before which a child or young person is found guilty of an offence punishable in the case of an adult with imprisonment shall, in addition to any other powers exercisable by virtue of this or any other Act, have power—
- (a) to order him to be sent to an approved school;
  - (b) to commit him to the care of a fit person, whether a relative or not, who is willing to undertake the care of him.
- (2) Where an order is made under this section committing a child or young person to the care of a fit person, a probation order may also be made under the Probation of Offenders Act, 1907.

**62 Power of Secretary of State to send certain juvenile offenders to approved schools**

The Secretary of State may by order direct that—

- (a) a person who is under the age of eighteen years and is undergoing detention in a Borstal institution; or
  - (b) a child or young person with respect to whom he is authorised to give directions under subsection (2) of section fifty-seven of this Act; or
  - (c) a young person who has been ordered to be imprisoned and has been pardoned by His Majesty on condition of his agreeing to undergo training in a school,
- shall be transferred or sent to and detained in an approved school specified in the order; and any such order shall be an authority for the detention of the person to whom it relates until such date as may be specified in the order:

Provided that the date to be so specified shall be not later than that on which he will in the opinion of the Secretary of State attain the age of nineteen years nor later—

- (a) in the case of a person who was undergoing detention in a Borstal institution, or was sentenced to detention under the said subsection (2), than the date on which his detention would have expired; or
- (b) in the case of a young person who has been ordered to be imprisoned and has been pardoned as aforesaid, than three years from the date as from which the order for his imprisonment began to run.

**63 Miscellaneous provisions as to summary proceedings against juvenile offenders**

- (1) The words " conviction " and " sentence " shall cease to be used in relation to children and young persons dealt with summarily and any reference in any enactment to a person convicted, a conviction or a sentence shall, in the case of a child or young

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*Status: This is the original version (as it was originally enacted).*

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person, be construed as including a reference to a person found guilty of an offence, a finding of guilt or an order made upon such a finding, as the case may be.

- (2) Where a child or young person is himself ordered by a court of summary jurisdiction to pay expenses in addition to a fine, the amount of the expenses so ordered to be paid shall in no case exceed the amount of the fine.
- (3) In addition to any other register required by law, a separate register of juvenile offenders found guilty of offences and of juvenile offenders discharged on bond or put on probation under the Probation of Offenders Act, 1907, shall be kept for every summary court by the chief constable or other person charged with the duty of keeping registers of convictions. The register shall apply to offenders of such age, and shall include such particulars, as may be directed by the Secretary of State, and it shall be the duty of the keeper of the register, within seven days after any such offender has been dealt with by the court, to transmit a copy of the entry relating to the offender to the education authority for the area in which the offender resides.

#### **64 Amendment of certain Acts in relation to child or young person**

- (1) In subsection (5) of section six of the Probation of Offenders Act, 1907 (which, as it applies to Scotland, relates to the powers of the court in a case where a person bound by a bond under the said subsection has failed to observe a condition of the bond) for the words " if the case was one in which the court in the first " instance might, under section fifteen of the Industrial " Schools Act, 1866, have ordered the offender to be " sent to a certified industrial school and the offender " is still apparently under the age of twelve years," there shall be substituted the words " if the case was one " in which the court had power to make an order sending " him to an approved school, and he is still under the " age of seventeen."
- (2) Notwithstanding anything in subsection (2) of section two of the said Act (as amended by section eight of the Criminal Justice Administration Act, 1914) it shall not be made a condition of a bond under the said Act that a child or young person shall reside in any institution which is not subject to inspection by the Secretary of State unless he is while residing in the institution to be employed, or to seek employment, outside it.
- (3) Where it is made a condition of a bond under the said Act that a child or young person shall reside in any institution, the court by which the probation order is made shall forthwith give notice of the terms of the order to the Secretary of State.
- (4) Where the residence of a child or young person in any institution has been made a condition of a bond under the said Act, the Secretary of State may at any time, if he considers that it is in the interests of the child or young person so to do, cause an application to be made to the court before which the child, or young person is bound by his bond to appear, and thereupon that court may vary the conditions of the bond by excluding therefrom the condition as to residence, or by substituting the name of some other institution.

#### *Children and Young Persons in need of Care or Protection*

#### **65 Definition of "in need of care or protection"**

- (1) For the purposes of this Act, a child or young person in need of care or protection means a person who comes within any of the descriptions hereinafter mentioned, that is to say—

- (a) a child or young person who, having no parent or guardian or a parent or guardian unfit to exercise care and guardianship or not exercising proper care and guardianship, is falling into bad associations, or exposed to moral danger, or beyond control; or
  - (b) a child or young person—
    - (i) in respect of whom any of the offences mentioned in the First Schedule to this Act has been committed; or
    - (ii) who is a member of the same household as a child or young person in respect of whom such an offence has been committed; or
    - (iii) who is a member of the same household as a person who has been convicted of such an offence in respect of a child or young person; or
    - (iv) who, being a female, is a member of the same household as a female in respect of whom an offence which constitutes the crime of incest has been committed by a member of that household,
 and who, in any such case as aforesaid, requires care or protection; or
  - (c) a child in respect of whom an offence has been committed under section twenty-one of this Act (which relates to the punishment of vagrants preventing children from receiving education).
- (2) For the purposes of this section, the fact that a child or young person is found destitute, or is found wandering without any settled place of abode and without visible means of subsistence, or is found begging or receiving alms (whether or not there is any pretence of singing, playing, performing or offering anything for sale), or is found loitering for the purpose of so begging or receiving alms, shall (without prejudice to the generality of the words of paragraph (a) of the last foregoing subsection) be evidence that he is exposed to moral danger.

## **66 Powers of juvenile courts in respect of children and young persons in need of care or protection**

- (1) Any education authority, constable or authorised person having reasonable grounds for believing that a child or young person is in need of care or protection may bring him before a juvenile court; and it shall be the duty of an education authority to bring before a juvenile court any child or young person residing or found in their area who appears to them to be in need of care or protection unless they are satisfied that the taking of proceedings is undesirable in his interests, or that proceedings are about to be taken by some other person.
- (2) If a juvenile court is satisfied that any person brought before it under the last foregoing subsection is a child or young person in need of care or protection, the court may—
  - (a) order him to be sent to an approved school; or
  - (b) commit him to the care of any fit person, whether a relative or not, who is willing to undertake the care of him; or
  - (c) order his parent or guardian to enter into a bond to exercise proper care and guardianship; or
  - (d) without making any other order, or in addition to making an order under either of the last two foregoing paragraphs, make an order placing him for a specified period, not exceeding three years, under the supervision of a probation officer, or of some other person appointed for the purpose by the court.
- (3) The Summary Jurisdiction (Scotland) Acts shall apply in relation to bonds under subsection (2) of this section as they apply in relation to bonds to be of good behaviour,

and where a bond under the said subsection (2) is adjudged to be forfeited, the court, if it thinks fit, instead of adjudging the person bound thereby to pay the sum for which he is bound, may adjudge him to pay part only of the said sum or may remit payment thereof.

- (4) For the purposes of this section, the expression " authorised person" means any officer of a society which is authorised by general or special order of the Scottish Education Department to institute proceedings under this section, and any person who is himself so authorised.

#### **67 Powers of other courts with respect to last foregoing section**

- (1) Any court by or before which a person is convicted of having committed in respect of a child or young person any of the offences mentioned in the First Schedule to this Act or any offence under section twenty-one of this Act, may—
- (a) direct that the child or young person be brought before a juvenile court with a view to that court making such order under the last foregoing section as may be proper; or
  - (b) if satisfied that the material before the court is sufficient to enable it properly to exercise jurisdiction, may make any order which the juvenile court might make.
- (2) Where any court has, under this section, directed that a child or young person be brought before a juvenile court, it shall be the duty of the education authority in whose area he was residing or found to bring him before such a court under subsection (1) of the last foregoing section.

#### *Refractory Children and Young Person*

#### **68 Power of parent or guardian to bring child or young person before juvenile court**

Where the parent or guardian of a child or young person proves to a juvenile court that he is unable to control the child or young person, the court, if satisfied—

- (a) that it is expedient so to deal with the child or young person; and
- (b) that the parent, or guardian understands the results which will follow from and consents to the making of the order,

may order the child or young person to be sent to an approved school, or may order him to be placed for a specified period, not exceeding three years, under the supervision of a probation officer or of some other person appointed for the purpose by the court :

Provided that an order that the child or young person be sent to an approved school shall not be made unless the education authority within whose area he is resident agree.

#### **69 Power of poor law authority to bring child or young person before juvenile court**

Where a poor law authority satisfy a juvenile court that any child or young person maintained in or boarded out from a school or other institution belonging to the authority is refractory, and that it is expedient that he should be sent to an approved school, the court may order him to be sent to such a school.

### *Supplemental*

#### **70 Supervision by probation officers or other persons**

- (1) Where a court makes an order under any of the foregoing provisions of this Part of this Act placing a child or young person under the supervision of a probation officer or of some other person, that officer or person shall, while the order remains in force, visit, advise and befriend him and, when necessary, endeavour to find him suitable employment and may, if it appears necessary in his interests so to do, at any time while the order remains in force and he is under the age of seventeen years, bring him before a juvenile court, and that court may, if it thinks that it is desirable in his interests so to do, order him to be sent to an approved school or commit him to the care of a fit person, whether a relative or not, who is willing to undertake the care of him.
- (2) Where the probation officer or other person named in an order as aforesaid placing a child or young person under supervision has died or is unable for any reason to carry out his duties, or where it is made to appear that it is for any reason desirable that another person should be appointed in the place of that officer or person, a juvenile court may appoint another probation officer or person to act in his place.
- (3) For the purposes of the provisions of the Probation of Offenders (Scotland) Act, 1931, relating to the salaries, remuneration and expenses of probation officers, an order as aforesaid placing a child or young person under supervision shall be deemed to be a probation order.

#### **71 Interim detention of child or young person in place of safety**

- (1) A constable, or any person authorised by of any court or by any justice, may take to a place of safety any child or young person in respect of whom any of the offences mentioned in the First Schedule to this Act has been or is believed to have been committed, or who is about to be brought before a juvenile court in accordance with any of the last five foregoing sections, and a child or young person so taken to a place of safety, and any child or young person who has taken refuge in a place of safety, may be detained there until he can be brought before a juvenile court.
- (2) If a juvenile court before which any child or young person is brought is not in a position to decide whether any and, if so, what, order ought to be made under the last five foregoing sections, it may make such interim order as it thinks fit for his detention or continued detention in a place of safety, or for his committal to the care of a fit person, whether a relative or not, who is willing to undertake the care of him.

An interim order under this subsection shall not remain in force for more than twenty-eight days; but if at the expiration of that period the court deems it expedient to do so, it may make a further interim order.

#### **72 Regard to be had to religious persuasion of person sent to approved school**

- (1) A court before making an approved school order with respect to any child or young person shall endeavour to ascertain his religious persuasion.
- (2) A court, or the Scottish Education Department, in determining the approved school to which a person is to be sent shall, where practicable, select a school for persons of the religious persuasion to which he belongs.

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*Status: This is the original version (as it was originally enacted).*

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- (3) Where an order has been made sending a person to an approved school which is not a school for persons of the religious persuasion to which he belongs, his parent, guardian or nearest adult relative may apply—
- (a) if the order was made by a court of summary jurisdiction, to a juvenile court acting for the same place; and
  - (b) in any other case, to the Scottish Education Department,
- to remove or send the person to an approved school for persons of his religious persuasion, and the court or Scottish Education Department shall, on proof of his religious persuasion and notwithstanding any declaration with respect thereto embodied in the approved school order, if any, relating to him, comply with the request of the applicant:

Provided that nothing in this subsection shall empower a court, or impose an obligation upon the Scottish Education Department, to comply with any such request as aforesaid unless the applicant has—

- (i) made his application before, or within thirty-days after, the person's arrival at the school; and
- (ii) named a school for persons of the religious persuasion in question and shown to the satisfaction of the court or Scottish Education Department that the managers thereof have accommodation available.

### **73      Corning into force of approved school orders**

- (1) An approved school order may be made to take effect immediately, or its operation may be postponed to a later date specified in the order or to be subsequently specified by endorsement thereon in accordance with the provisions of this Act :

Provided that the operation of the order shall not be postponed except pending the completion of arrangements for the reception of the child or young person into a suitable school, or on account of his ill-health.

- (2) If an approved school order is not made to take effect immediately, or if at the time when such an order takes effect the child or young person cannot be sent to the school, the court which made the order or any other court which would have jurisdiction to make an endorsement thereon under the next following section may make an order committing him either to custody in any place to which he might be committed on remand, or to the custody of a fit person to whose care he might be committed under this Act, and, subject as hereinafter provided, that order shall have effect until he is sent to an approved school in pursuance of the approved school order :

Provided that an order made under this subsection shall not remain in force for more than twenty-eight days, but if at the expiration of that period any such court as aforesaid considers it expedient so to do, the court may make a further order under this subsection.

Any order made under this subsection may be made in the absence of the child or young person concerned.

### **74      Contents of approved school orders**

- (1) Every approved school order shall contain a declaration—
- (a) as to the age; and



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*Status: This is the original version (as it was originally enacted).*

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(b) as to the religious persuasion  
of the child or young person with respect to whom it is made.

- (2) Every approved school order, other than an order made on the application of a poor law authority in their capacity as such or made by reason of the commission of an offence under section twenty-one of this Act (which relates to the punishment of vagrants preventing children from receiving education), shall name the education authority within whose area the child or young person was resident, or if that is not known, the education authority or one of the education authorities within whose area the offence was committed or the circumstances arose (as the case may be) rendering him liable to be sent to an approved school:

Provided that—

- (a) in determining for the purposes of this subsection the place of residence of a child or young person, any period during which he resided in any place as an inmate of a school or other institution, or while boarded out under this Act by an education authority to whose care he has been committed, or in accordance with the conditions of a bond, shall be disregarded; and
- (b) in the case of a child or young person not resident in Scotland, the order shall, instead of naming an education authority, state that he was resident outside Scotland.
- (3) Every approved school order which is made to take effect immediately shall—
- (a) specify the approved school to which the child or young person with respect to whom the order is made is first to be sent, being that one of the available schools (whether situate within the jurisdiction of the court making the order or not) which the court, after considering any representations made to it by the education authority concerned, considers to be most suitable to the case; and
- (b) state whether the education or poor law authority, if any, named therein or the probation officer or the police authority is to be responsible for conveying to his school the child or young person with respect to whom the order is made.
- (4) Where an approved school order is not made to take effect immediately, then, if either the date to which its operation is postponed or the school to which the child or young person is to be sent or the authority or person who is to be responsible for conveying him, is not specified in the order, the date, school, authority, or person, as the case may be, shall be subsequently specified by endorsement thereon.
- (5) If for any reason a child or young person with respect to whom an approved school order has been made cannot be received into the approved school specified in or endorsed upon the order, another school may be specified by an endorsement or further endorsement thereon, as the case may be.
- (6) An endorsement under the foregoing provisions of this section may be made—
- (a) by the court which made the approved school order; or
- (b) if the order was made by a court of summary jurisdiction, by a juvenile court acting for the same place; or
- (c) if the order was made by a court not being a court of summary jurisdiction, by a juvenile court acting for the place where the child or young person was committed for trial, or if he was not committed for trial, by a juvenile court acting for the place within which he was resident;
- and any such endorsement may be made in the absence of the child or young person concerned.

- (7) An approved school order made on the application of a poor law authority in their capacity as such shall state that it is so made upon the application of that authority, and an approved school order made by reason of the commission of an offence under section twenty-one of this Act (which relates to the punishment of vagrants preventing children from receiving education) shall state that it is so made.

#### **75 Duration of approved school orders**

- (1) Where a court orders a child to be sent to an approved school, the order shall be an authority for his detention in an approved school until the expiration of a period of three years from the date of the order and, if at the expiration of that period he is under the age of fifteen years, for his further detention until he attains that age.
- (2) Where a court orders a young person to be sent to an approved school, the order shall be an authority for his detention in an approved school—
- (a) if at the date of the order he has not attained the age of sixteen years, until the expiration of a period of three years from the date of the order; and
  - (b) if at the date of the order he has attained the age of sixteen years, until he attains the age of nineteen years.

#### **76 Conveyance of children or young persons to approved schools**

- (1) The court which makes, or makes any endorsement upon, an approved school order shall cause it to be delivered to the authority or person responsible for conveying the child or young person to his school, and the person who conveys him to the school shall deliver the order to the headmaster or person for the time being in charge of the school.
- (2) The court by which an approved school order is made shall cause a record in the prescribed form, embodying all such information in the possession of the court with respect to the child or young person as is in the opinion of the court material to be known by the managers of the school, to be prepared and transmitted to the headmaster or person for the time being in charge of the school.
- (3) The education or poor law authority, probation officer or police authority, stated by any approved school order to be responsible for conveying a child or young person to his school, shall be responsible for conveying him there at the expense of the education or poor law authority, the probation committee, or police authority, as the case may be.
- (4) Where a child or young person has been ordered to be sent to an approved school, any person who harbours or conceals him after the time has come for him to go to his school shall on summary conviction be liable to be imprisoned for any term not exceeding two months, or to a fine not exceeding twenty pounds, or to both such imprisonment and fine.
- (5) Where a person authorised to take a child or young person to an approved school is, when the time has come for him to go to his school, unable to find him or unable to obtain possession of him, a court of summary jurisdiction may, if satisfied by information on oath that some person named in the information can produce the child or young person, make an order requiring the person so named to attend at the court on such day as may be specified in the order and produce the child, or young person and, if he fails to do so without reasonable excuse, he shall, in addition to any other liability

to which he may be subject under the provisions of this Act, be liable on conviction by a court of summary jurisdiction to a fine not exceeding five pounds.

#### **77 Extension of period of detention in approved schools**

If the managers of an approved school are satisfied that a person whose period of detention therein is, under the foregoing provisions of this Act, about to expire needs further care or training and cannot without it be placed in suitable employment, they may, if in the case of a person detained by order of a court the Scottish Education Department consent, and if in any other case the Secretary of State consents, detain such person for a further period not exceeding six months, so, however, that he is not detained beyond the date on which he will attain the age of nineteen years :

Provided that the powers conferred by this section shall not extend to a person who, having been a person undergoing detention in a Borstal institution or sentenced to detention under subsection (2) of section fifty-seven of this Act, is detained in an approved school by order of the Secretary of State.

#### **78 Supervision and recall after expiration of order**

- (1) A person sent to an approved school shall after the expiration of the period of his detention be under the supervision of the managers of his school—
  - (a) if at the expiration of that period he has not attained the age of fifteen years, until he attains the age of eighteen years;
  - (b) if he has at the expiration of that period attained the age of fifteen years, for a period of three years or until he attains the age of twenty-one years, whichever may be the shorter period.
- (2) The managers may, and, if the Scottish Education Department so direct, shall, by notice in writing recall to the school any person under their supervision who is at the date of the recall under the age of nineteen years :

Provided that a person shall not be so recalled, unless in the opinion of the managers, or, as the case may be, of the Scottish Education Department, it is necessary in his interests to recall him.

- (3) A person who has been so recalled shall be released as soon as the managers think that he can properly be released, and in no case shall he be detained—
  - (a) after the expiration of a period of three months, or of such longer period not exceeding six months as the Scottish Education Department may, after considering the circumstances of his case, direct; or
  - (b) after attaining the age of nineteen years.
- (4) The managers shall forthwith notify the Scottish Education Department of the recall of any person and shall state the reasons for his recall, and when the managers release any person so recalled they shall forthwith notify the Scottish Education Department that they have done so.
- (5) For the purposes of this Act, a person who is out under supervision from an approved school shall be deemed to be under the care of the managers of the school.

**79 Provisions as to making, duration, and effect, of orders of committal to fit persons**

- (1) Before making an order under this Act committing a child or young person to the care of a fit person, the court shall endeavour to ascertain the religious persuasion of the child or young person, and, in selecting the person to whose care the child or young person is to be committed, the court shall if possible select a person who is of the same religious persuasion as the child or young person or who gives an undertaking that he will be brought up in accordance with that religious persuasion.
- (2) Every order committing a child or young person to the care of a fit person shall contain a declaration—
  - (a) as to the age; and
  - (b) as to the religious persuasionof the child or young person with respect to whom it is made.
- (3) Every order committing a child or young person to the care of a fit person shall, subject to the provisions of this Act, remain in force until he attains the age of eighteen years.
- (4) The person to whose care a child or young person is committed by any such order as aforesaid shall, while the order is in force, have the same rights and powers and be subject to the same liabilities in respect of his maintenance as if he were his parent, and the child or young person so committed shall continue in his care notwithstanding any claim by a parent or any other person.

**80 Committal to local and other authorities as "fit persons"**

- (1) The education authority shall for the purposes of the provisions of this Act relating to the making of orders committing children and young persons to the care of fit persons be deemed to be a fit person and accordingly orders may be made committing children and young persons to their care and they may undertake the care of children and young persons so committed.
- (2) An order may be made under this Act committing to the care of the Minister of Pensions, or of a person appointed by him, any child or young person for the care of whom it is the duty of the Minister under section nine of the War Pensions (Administrative Provisions) Act, 1918, to make provision, and accordingly in subsection (4) of that section the reference to an order made under section twenty-one or subsection (7) of section fifty-eight of the Children Act, 1908, shall be construed as including a reference to an order made under this Act.