



Children and Young Persons (Scotland) Act 1937

1937 CHAPTER 37

PART VII

MISCELLANEOUS AND GENERAL

100 Reception and maintenance of children and young persons in poorhouses

Poor law authorities shall provide for the reception of children and young persons brought to a poorhouse in pursuance of this Act, and, where the place to which under this Act a child or young person is authorised to be taken is a poorhouse, the person in charge thereof shall receive the child or young person into the poorhouse if there is suitable accommodation therein.

101 Powers, duties and expenses of local authorities, and c

- (1) Expenses incurred by a local authority under Part I of this Act shall be defrayed in like manner as expenditure for the relief of the poor.
- (2) Expenses incurred under this Act by an education authority shall be defrayed in like manner as expenses of the authority under the Education (Scotland) Acts, 1872 to 1936, and expenses incurred under this Act by a poor law authority or by a local authority in their capacity as poor law authority shall be defrayed in like manner as expenditure for the relief of the poor :

Provided that expenses incurred in respect of a child or young person brought to a poorhouse under this Act shall form part of the establishment charges of the poorhouse.

- (3) Expenses incurred under this Act by a police authority shall be defrayed in like manner as expenditure for administration of the police, provided that in any burgh where such expenditure was under the law existing at the passing of the Children Act, 1908, payable in whole or in part out of the burgh general assessment expenses incurred under this Act by the police authority of such burgh or any contribution

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to such expenses payable by the burgh by virtue of section twenty-one of the Local Government (Scotland) Act, 1929, shall be defrayed out of such rate payable by owners and occupiers in equal proportions as the town council may determine.

- (4) Expenses incurred under this Act by a local authority (other than any expenses referred to in either of the last two foregoing subsections), and any contribution to such expenses payable by a town council by virtue of section twenty-one of the Local Government (Scotland) Act, 1929, shall be defrayed out of such rate payable by owners and occupiers in equal proportions as the council may determine.
- (5) A local authority or an education authority shall have power to borrow for the purposes of any powers or duties conferred or imposed on them by this Act, and the provisions of section twenty-three of the Local Government (Scotland) Act, 1929, and, in the case of an education authority, of section forty-five of the Education (Scotland) Act, 1872, as amended by any subsequent enactment shall apply to the power hereby conferred.
- (6) A local authority or an education authority shall for the purposes of any powers or duties conferred or imposed on them by this Act have power to acquire, dispose of or otherwise deal with land in like manner as a local authority under the Housing (Scotland) Act, 1925, for the purposes of that Act, and sections fifty and fifty-one of, and the Third Schedule to, the said Act shall apply accordingly with the substitution of the Secretary of State or the Scottish Education Department, as the case may be, for the Board referred to in the said enactments or in any enactment applied by them.
- (7) A local authority, an education authority, a poor law authority or a committee to whom any powers of any such authority under this Act have been delegated, may by resolution empower the clerk or other officer of the authority to exercise in the name of the authority in any case which appears to him to be one of urgency any powers of the authority or, as the case may be, of the committee with respect to the institution of proceedings under this Act.
- (8) A local authority may, with the approval of the Department of Health for Scotland (and so long as that approval is not withdrawn), subscribe to the funds of an association or society for the prevention of cruelty to children.

102 Institution of proceedings by local or poor law authorities

- (1) A local authority or a poor law authority may institute proceedings for any offence under sections twelve, thirteen, fourteen, fifteen or twenty-two of this Act.
- (2) Any such authority may appear by their clerk or other officer duly authorised in that behalf in any proceedings instituted by them under this Act.

Supplementary Provisions as to Legal Proceedings

103 Presumption and determination of age

- (1) Where a person, whether charged with an offence or not, is brought before any court otherwise than for the purpose of giving evidence, and it appears to the court that he is a child or young person, the court shall make due inquiry as to the age of that person, and for that purpose shall take such evidence as may be forthcoming at the hearing of the case, but an order or judgment of the court shall not be invalidated by any subsequent proof that the age of that person has not been correctly stated to the court, and the age presumed or declared by the court to be the age of the person so

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brought before it shall, for the purposes of this Act, be deemed to be the true age of that person, and, where it appears to the court that the person so brought before it has attained the age of seventeen years, that person shall for the purposes of this Act be deemed not to be a child or young person.

- (2) Where in any complaint or indictment for any offence under this Act or any of the offences mentioned in the First Schedule to this Act, except an offence under the Criminal Law Amendment Act, 1885, it is alleged that the person by or in respect of whom the offence was committed was a child or young person or was under or had attained any specified age, and he appears to the court to have been at the date of the commission of the alleged offence a child or young person, or to have been under or to have attained the specified age, as the case may be, he shall for the purposes of this Act be presumed at that date to have been a child or young person or to have been under or to have attained that age, as the case may be, unless the contrary is proved.
- (3) Where, in any complaint or indictment for any offence under this Act or any of the offences mentioned in the First Schedule to this Act, it is alleged that the person in respect of whom the offence was committed was a child or was a young person, it shall not be a defence to prove that the person alleged to have been a child was a young person or the person alleged to have been a young person was a child in any case where the acts constituting the alleged offence would equally have been an offence if committed in respect of a young person or child respectively.
- (4) Where a person is charged with an offence under this Act in respect of a person apparently under a specified age, it shall be a defence to prove that the person was actually of or over that age.

104 Evidence of wages of defendant

In any proceedings under this Act a copy of an entry in the wages book of any employer of labour, or if no wages book be kept a written statement signed by the employer or by any responsible person in his employ, shall be evidence that the wages therein entered or stated as having been paid to any person, have in fact been so paid.

105 Summary jurisdiction

- (1) Subject to the provisions of this Act, all orders of a court of summary jurisdiction under this Act shall be made, and all proceedings in relation to any such orders shall be taken, in manner provided by the Summary Jurisdiction (Scotland) Acts, and the power of making rules under section sixteen of the Summary Jurisdiction (Scotland) Act, 1908, shall extend to making rules for regulating the procedure of courts of summary jurisdiction under this Act and matters incidental thereto.
- (2) Any magistrate who, by virtue of a local Act had jurisdiction before the first day of April nineteen hundred and nine for any of the purposes of the Prevention of Cruelty to Children Act, 1904, shall have jurisdiction for the like purposes of Part II of this Act.

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Supplementary Provisions as to Secretary of State

106 Powers of Secretary of State and Scottish Education and Health Departments to appoint inspectors, and c

- (1) The Secretary of State and the Scottish Education Department may, for the purposes of their respective powers and duties under the enactments relating to children and young persons, appoint such number of inspectors as the Treasury may approve and may pay to the persons respectively appointed by them such remuneration and allowances as, with the consent of the Treasury, the Secretary of State or the Department, as the case may be, may determine, and the Department may authorise or require any of His Majesty's Inspectors of Schools to exercise any power or perform any duty which might be exercised or performed by any inspector appointed in pursuance of this section.
- (2) The Department of Health for Scotland shall have, for the purposes of Part I of this Act, the like power of making inquiries, calling for returns, and applying to the Court of Session as they have for the purposes of the Poor Law (Scotland) Act 1845.

107 Exchequer grants and expenses of Secretary of State and Scottish Education Department

- (1) There shall be paid out of money provided by Parliament—
 - (a) such sums on such conditions as the Secretary of State with the approval of the Treasury may recommend towards—
 - (i) the expenses of the managers of an approved school;
 - (ii) the expenses of an education authority in respect of children and young persons committed to their care;
 - (iii) the expenses of a council of a local authority in respect of remand homes;
 - (b) any expenses incurred by the Secretary of State or the Scottish Education Department in the administration of this Act.
- (2) The conditions on which any sums are paid under this section towards the expenses incurred in connection with the provision of a site for, or with the erection, enlargement, improvement or repair of, an approved school, may include conditions for securing the repayment in whole or in part of the sums paid in the event of the school ceasing to be an approved school, and, notwithstanding anything in the constitution of the school or of the managers thereof, or in the trusts, if any, to which the property of the school or of the managers is subject, the managers and any persons who are trustees of any of the said property may accept those sums on those conditions, and execute any instrument required for carrying into effect those conditions, and shall be bound by those conditions and by any instrument so executed and have power to fulfil the conditions and the obligations created by the instrument.

108 Powers of Secretary of State may be transferred

It shall be lawful for the Secretary of State, with the consent of the Treasury, from time to time to make an order transferring to the Scottish Education Department or to the Department of Health for Scotland any power for the time being possessed by him under this Act (not being a power under section fifty or section fifty-one of this Act), and by such order to make any adjustment consequential on the transfer and to provide

for any matter necessary or proper for giving full effect to the transfer, and, on any such order being made, the powers so transferred shall be exercisable by the Scottish Education Department, or the Department of Health for Scotland, as the case may be.

General

109 Provisions as to documents, and c

- (1) An order or other act of the Secretary of State under this Act may be signified under the hand of the Secretary of State or an Under-Secretary of State or an Assistant Under-Secretary, and an order or other act of the Scottish Education Department may be signified under the hand of the Secretary or of an Assistant Secretary of the Department.
- (2) A document purporting to be a copy—
 - (a) of an order made by a court under or by virtue of any of the provisions contained in sections sixty, sixty-one and sixty-six to ninety-four of this Act or in the Second Schedule to this Act; or
 - (b) of an order made after the commencement of this Act under section four of the Day Industrial Schools (Scotland) Act, 1893, sending a person to an approved school or committing him to the care of a fit person; or
 - (c) of a decree for aliment referred to in an order under section ninety-two of this Act,shall, if it purports to be certified as a true copy by the clerk of the court, be evidence of the order or decree.
- (3) The production of a copy of the Edinburgh Gazette containing a notice of the grant, or of the withdrawal or surrender, of a certificate of approval of an approved school shall be sufficient evidence of the fact of a certificate having been duly granted to the school named in the notice, or of the withdrawal or surrender of such a certificate, and the grant of a certificate of approval of an approved school may also be proved by the production of the certificate itself, or of a document purporting to be a copy of the certificate and to be authenticated as such by the Secretary or an Assistant Secretary of the Scottish Education Department.
- (4) Any notice or other document required or authorised by this Act to be served on the managers of an approved school may, if those managers are an education authority or a joint committee representing two or more education authorities, be served either personally or by post upon their clerk, and in any other case, may be served either personally or by post upon any one of the managers, or their secretary, or the headmaster of the school.
- (5) An order, licence, or other document may be authenticated on behalf of the managers of an approved school, if they are an education authority or a joint committee representing two or more education authorities, by the signature of their clerk or some other officer of the education authority duly authorised in that behalf, and in any other case, by the signature of one of the managers or their secretary, or of the headmaster.

110 Interpretation

- (1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say :—

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" Approved school " means a school approved by the Scottish Education Department under section eighty-three of this Act;

" Approved school order " means an order made by a court sending a child or young person to an approved school;

" Borstal institution " means an institution established under Part I of the Prevention of Crime Act, 1908;

" Certificate," " exciseable liquor, " and " permitted hours " have the like meanings as in the Licensing (Scotland) Acts, 1903 to 1923;

" Child " (except as provided in section thirty-seven of this Act) means a person under the age of fourteen years;

" Commit for trial " means commit until liberation in due course of law;

" Court of summary jurisdiction " means the sheriff or any two or more justices of the peace or any magistrate or magistrates by whatever name called officiating under the provisions of any general or local police Act;

" Guardian," in relation to a child or young person, includes any person who, hi the opinion of the court having cognizance of any case in relation to the child or young person or in which the child or young person is concerned, has for the time being the charge of or control over the child or young person ;

" Headmaster " includes superintendent;

" In need of care or protection " has the meaning assigned to it by section sixty-five of this Act;

" Justice " (except in section fifty-one of this Act) includes the sheriff and any such magistrate as aforesaid;

" Large burgh " has the like meaning as in the Local Government (Scotland) Act, 1929;

" Legal guardian " in relation to a child or young person means a person appointed, according to law, to be his guardian by deed or will, or by order of a court of competent jurisdiction;

" Licensed premises " means premises for which a certificate within the meaning of the Licensing (Scotland) Acts, 1903 to 1923, is held, and " bar " in relation to any licensed premises means any open drinking bar or any part of the premises exclusively or mainly used for the sale and consumption of exciseable liquor;

" Local authority " and " poor law authority " mean the council of a county or of a large burgh;

" Managers, " in relation to an approved school established or taken over by an education authority or by a joint committee representing two or more education authorities, means the education authority or the joint committee as the case may be, and in relation to any other approved school, means the persons for the time being having the management or control thereof;

" Passage " includes common close, or common stair, or common passage;

" Place of safety " means any remand home, poor house, or police station, or any hospital, surgery, or any other suitable place, the occupier of which is willing temporarily to receive a child or young person;

" Police authority " means a county council or the council of a burgh maintaining a separate police force;

" Prescribed " means prescribed by regulations made by the Secretary of State or by the Scottish Education Department according as the matter to be dealt with is within the powers of the Secretary of State or of the Department;

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" Public place " includes any public park, garden, sea beach or railway station, and any ground to which the public for the time being have or are permitted to have access, whether on payment or otherwise;

" Remand " means an order adjourning the proceedings or continuing the case and giving direction as to the detention in custody or liberation of a person during the period of adjournment or continuation and any reference to remanding a person or to remanding in custody shall be construed accordingly;

" Street " includes any highway and any public A.D. 1937. bridge, road, lane, footway, square, court, alley—or passage whether a thoroughfare or not;

" Young person " means a person who has attained the age of fourteen years and is under the age of seventeen years.

- (2) For the purpose of any powers or duties which are by this Act conferred or imposed on county councils and on the councils of certain burghs only, all other burghs shall be included within the county.
- (3) (a) For the purpose of any provision of this Act referring to a court acting for any place—
- (i) a court entitled to exercise jurisdiction in any place shall be deemed to be a court acting for that place;
 - (ii) the sheriff court, and the justice of the peace court for any county, and the juvenile court for any area shall each be deemed to be a court acting for the same place as the burgh or police court of any burgh situated in that county or area, as the case may be;
 - (iii) the sheriff court for any county shall be deemed to be a court acting for the same place as the justice of the peace court for that county;
 - (iv) the juvenile court for any area being a county shall be deemed to be a court acting for the same place as the sheriff court or the justice of the peace court for that county;
- and save as aforesaid no court shall be deemed to be a court acting for the same place as any other court.
- (b) In this subsection the expression " county " includes a county of a city, and a burgh being a county of a city shall be deemed to be a burgh situated in the county of the city, and the sheriff court for any county means the sheriff court of the sheriffdom comprising the county.
- (4) References in this Act to findings of guilty and findings that an offence has been committed shall be construed as including references to pleas of guilty and admissions that an offence has been committed.
- (5) References in this Act to any enactment or to any provision in any enactment shall, unless the context otherwise requires, be construed as references to that enactment or provision as amended by any subsequent enactment including this Act.

111 Transitory provisions

- (1) Without prejudice to the provisions of the Interpretation Act, 1889, with respect to repeals, the transitory provisions set out in the Third Schedule to this Act shall have effect for the purposes of the transition to the provisions of this Act from the provisions of the enactments repealed by this Act.

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- (2) References in any Act to places of detention provided under section one hundred and eight of the Children Act, 1908, shall be construed as references to remand homes provided under this Act.
- (3) References in any Act or other document to reformatory schools or industrial schools and to youthful offenders and children sent thereto or detained therein shall be construed as including references to approved schools and to children and young persons sent thereto or detained therein, and references in any Act or other document to orders committing a child or young person to the care of a fit person under any of the provisions of the Children Act, 1908, shall be construed as including references to orders of the like nature made under this Act.
- (4) References in any Act or other document to juvenile courts under the Children Act, 1908, shall be construed as including references to such courts under this Act.
- (5) References in any Act or other document to any enactment repealed and re-enacted with or without modifications by this Act shall be construed as including references to the corresponding provision of this Act.
- (6) The reference in the First Schedule to this Act to any offence under sections twelve, thirteen, fourteen, twenty-two or thirty-three of this Act shall be construed as including a reference to any offence under the Dangerous Performances Acts, 1879 and 1897, or under Part II of the Children Act, 1908.

112 Saving of provisions in Aberdeen local Act

Subject to the provisions herein-after contained, nothing in this Act shall be construed to repeal, alter, prejudice, or affect any of the provisions of the Aberdeen Reformatories and Industrial Schools Act, 1885, and the directors acting under that Act shall continue to have the full rights, privileges, and powers competent to them immediately prior to the commencement of this Act: Provided, nevertheless, that the Secretary of State may, by order under his hand, provide for altering, amending, or adapting that Act so as to provide (a) for the re-constitution of the board of directors, for the election of new directors, for subsequent elections of directors, for the annual retiral of one-third or other proportion of the directors, and for supplying vacancies arising from time to time; and (b) for otherwise altering, amending or adapting the provisions of the said Act, as may seem to him necessary to make those provisions conform with the provisions of this Act, or to enable the powers under the said Act to be exercised-as if they were powers under this Act. Any such order may be revoked and varied by a subsequent order.

113 Short title, commencement, extent and repeals

- (1) This Act may be cited as the Children and Young Persons (Scotland) Act, 1937.
- (2) This Act, except section twenty-nine thereof, shall come into operation on the first day of July nineteen hundred and thirty-seven.
- (3) Save as therein otherwise expressly provided, this Act shall extend only to Scotland.
- (4) The enactments mentioned in the Fourth Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.