



# Children and Young Persons (Scotland) Act 1937

1937 CHAPTER 37

## PART III

### EMPLOYMENT

#### *General Provisions as to Employment*

#### **28 Restrictions on employment of children**

- (1) Subject to the provisions of this section and of any byelaws made thereunder, no child shall be employed—
- (a) so long as he is under the age of twelve years; or
  - (b) before the close of school hours on any day on which he is under obligation to attend school; or
  - (c) before six o'clock in the morning on any day or after seven o'clock in the evening on any day during the period from the first day of October to the thirty-first day of March, or after eight o'clock in the evening on any day during the period from the first day of April to the thirtieth day of September; or
  - (d) for more than two hours on any day on which he is under obligation to attend school; or
  - (e) for more than two hours on any Sunday; or
  - (f) to lift, carry or move anything so heavy as to be likely to cause injury to him.
- (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—

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- (i) the employment of children under the age of twelve years (notwithstanding anything in paragraph (a) of the last foregoing subsection) by their parents or guardians in light agricultural or horticultural work;
- (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.
- (3) Nothing in any byelaw made under this section shall prevent a child from taking part in an entertainment under and in accordance with the provisions of a licence granted and in force under the provisions of this Part of this Act.

## **29 Power of education authority to make byelaws with respect to employment of persons under eighteen other than children**

- (1) Subject to the provisions of this section, an education authority may make byelaws with respect to the employment of persons under the age of eighteen years other than children, and any such byelaws may distinguish between persons of different ages and sexes, and between different localities, trades, occupations and circumstances, and may contain provisions prescribing—
  - (a) the number of hours in each day or in each week for which, and the time of day at which, they may be employed;
  - (b) the intervals to be allowed to them for meals and rest;
  - (c) the holidays or half-holidays to be allowed to them;
  - (d) any other conditions to be observed in relation to their employment.
- (2) Nothing in this section shall empower an education authority to make byelaws with respect to—
  - (a) employment in or about the delivery, collection, or transport of goods, except in the capacity of van boy, errand boy, or messenger;
  - (b) employment in or in connection with factories, workshops, mines, quarries, shops, or offices, except in the capacity of van boy, errand boy, or messenger;
  - (c) employment in the building or engineering trades, except in the capacity of van boy, errand boy, or messenger;
  - (d) employment in agriculture;
  - (e) employment in domestic service, except as non resident daily servant;

- (f) employment in any ship or boat registered in the United Kingdom as a British ship or in any British fishing boat entered in the fishing boat register.
- (3) This section shall not come into operation until such date as may be appointed by an order of the Secretary of State, and the Secretary of State shall not make such an order until a draft thereof has been laid before both Houses of Parliament and has been approved by resolutions passed in the same session of Parliament by both Houses.

### **30 Street trading**

- (1) No person under the age of seventeen years shall engage or be employed in street trading :

Provided that byelaws made under this section may permit young persons who have not attained the age of seventeen years to be employed by their parents in street trading.

- (2) An education authority may make byelaws regulating or prohibiting street trading by persons under the age of eighteen years, and byelaws so made may distinguish between persons of different ages and sexes and between different localities, and may contain provisions—
  - (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;
  - (b) determining the days and hours during which, and the places at which, such persons may engage or be employed in street trading;
  - (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.

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

- (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 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 five pounds or, in the case of a second or subsequent offence, not exceeding twenty pounds:

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—

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- (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.
- (3) A person under the age of eighteen years, 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 twenty shillings, or in the case of a second or subsequent offence, not exceeding forty shillings.

### *Entertainments and Performances*

## **32 Restrictions on children taking part in entertainments**

- (1) Subject to the provisions of this section a child shall not, except under and in accordance with the provisions of a licence granted and in force thereunder, take part in any entertainment in connection with which any charge, whether for admission or not, is made to any of the audience; and every person who causes or procures a child, or being his parent or guardian allows him, to take part in an entertainment in contravention of this section, shall, on conviction by a court of summary jurisdiction, be liable to a fine not exceeding five pounds or, in the case of a second or subsequent offence, not exceeding twenty pounds.
- (2) Subject as hereinafter provided and without prejudice to the provisions of this Part of this Act and any byelaws made thereunder with respect to employment, a licence under this section shall not be necessary for a child to take part in an entertainment if—
- (a) he has not during the preceding six months taken part on more than six occasions in entertainments in connection with which any such charge as aforesaid was made; and
  - (b) the net proceeds of the entertainment are devoted to purposes other than the private profit of the promoters :

Provided that this subsection shall not apply in the case of an entertainment given in premises which are licensed for the sale of any exciseable liquor unless either—

- (i) those premises are also licensed for the public performance of stage plays or for public music, singing or dancing; or
  - (ii) special authority for the child to take part in the entertainment has been granted in writing under the hands of two justices of the peace.
- (3) Subject to such restrictions and conditions as may be prescribed by rules made by the Scottish Education Department, and without prejudice to the provisions of this Part of this Act with respect to employment, an education authority may grant a licence for a child who has attained the age of twelve years and is residing in their area to take part in any specified entertainment or series of entertainments, whether within or without that area :

Provided that—

- (a) no licence shall be granted unless the education authority are satisfied that the child is fit to take part in the entertainment, or series of entertainments, and that proper provision has been made to secure his health and kind treatment; and

- (b) no licence shall be granted in respect of any entertainment which is to take place on a Sunday.
- (4) The holder of a licence under this section shall, at least seven days before the child takes part in any entertainment, furnish to the education authority within whose area the entertainment is to take place particulars of the licence and such other information as the Scottish Education Department may by rules prescribe and, if he fails so to do, he shall be liable on conviction by a court of summary jurisdiction to a fine not exceeding five pounds.
- (5) If any restriction or condition contained in a licence under this section is not observed, the licence may be revoked by any education authority within whose area any entertainment to which it relates has taken or is about to take place; and, subject to any restrictions and conditions prescribed by rules made by the Scottish Education Department, any such licence may at the request of the holder of the licence be varied or extended by any such education authority as aforesaid.
- (6) If the applicant for, or holder of, a licence under this section feels aggrieved by any decision of an education authority, he may appeal to the Scottish Education Department, who may thereupon exercise any of the powers conferred on an education authority by this section.

### **33 Prohibition of persons under sixteen taking part in performances endangering life or limb**

No person under the age of sixteen years shall take part in any public performance in which his life or limbs are endangered and every person who causes or procures such a person, or, being his parent or guardian, allows him, to take part in such a performance, shall be liable on summary conviction to a fine not exceeding ten pounds or, in the case of a second or subsequent offence, not exceeding fifty pounds.

### **34 Restrictions on training for performances of a dangerous nature**

- (1) No person under the age of twelve years shall be trained to take part in performances of a dangerous nature, and no person under the age of sixteen years shall be trained to take part in such performances except under and in accordance with the terms of a licence granted and in force under this section; and every person who causes or procures a person, or being his parent or guardian allows him, to be trained to take part in performances of a dangerous nature in contravention of this section, shall be liable on conviction by a court of summary jurisdiction to a fine not exceeding five pounds or, in the case of a second or subsequent offence, not exceeding twenty pounds.
- (2) An education authority may grant a licence for a person who has attained the age of twelve years but is under the age of sixteen years to be trained to take part in performances of a dangerous nature.
- (3) An applicant for a licence under this section shall, at least seven days before making the application, give notice thereof to the chief constable for the district in which the person is, in accordance with the provisions of the licence, to be trained, and that officer may appear, or instruct some person to appear, before the authority and show cause why the licence should not be granted, and no licence shall be granted unless the authority are satisfied that notice has been so given.

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- (4) A licence under this section shall specify the place or places at which the person is to be trained and shall embody such conditions as are, in the opinion of the authority, necessary for his protection, but a licence shall not be refused if the authority are satisfied that the person is fit and willing to be trained and that proper provision has been made to secure his health and kind treatment.
- (5) A licence under this section may, on cause being shown by any person, be revoked by the education authority which granted it.

### *Supplemental*

#### **35 Byelaws**

- (1) A byelaw made under this Part of this Act shall not have effect until confirmed by the Secretary of State and shall not be so confirmed until at least thirty days after the education authority have published it in such manner as the Secretary of State directs.
- (2) Before confirming such a byelaw the Secretary of State shall consider any objections thereto which may be addressed to him by persons affected or likely to be affected thereby, and may order a local inquiry to be held, and where such an inquiry is held, the person holding it shall receive such remuneration as the Secretary of State determines, and that remuneration and the expenses of the inquiry shall be paid by the education authority.
- (3) Byelaws so made may, without prejudice to any other method of proof, be proved in the like manner as that in which byelaws made under the Public Health (Scotland) Act, 1897, by a local authority may be proved, and section one hundred and eighty-seven of that Act shall apply accordingly.

#### **36 Powers of entry**

- (1) If it is made to appear to a justice by the education authority, or by any constable, that there is reasonable cause to believe that the provisions of this Part of this Act or of a byelaw made thereunder are being contravened with respect to any person, the justice may by order under his hand addressed to an officer of the education authority, or to a constable, empower him to enter, at any reasonable time within forty-eight hours of the making of the order, any place in or in connection with which the person in question is, or is believed to be, employed, or as the case may be, in which he is, or is believed to be, taking part in an entertainment or performance, or being trained, and to make inquiries therein with respect to that person.
- (2) Any authorised officer of the education authority or any constable may at any time during the currency of a licence granted under this Part of this Act enter any place where the person to whom the licence relates is authorised by the licence to take part in an entertainment or to be trained, and may make inquiries therein with respect to that person.
- (3) Any person who obstructs any officer or constable in the due exercise of any powers conferred on him by or under this section, or who refuses to answer or answers falsely any inquiry authorised by or under this section to be made, shall be liable on summary conviction in respect of each offence to a fine not exceeding twenty pounds.

### 37 Interpretation of Part III

For the purposes of the foregoing provisions of this Part of this Act and of any byelaws made thereunder—

- (a) The expression " child " shall, as from the first day of September, nineteen hundred and thirty-nine, mean instead of a person under fourteen years of age, a person under fifteen years of age;
- (b) The expression " performance of a dangerous nature" includes all acrobatic performances and all performances as a contortionist;
- (c) The expression " street trading " includes the hawking of newspapers, matches, flowers and other articles, playing, singing or performing for profit, shoe-blackening and other like occupations carried on in streets or public places ;
- (d) A child under obligation to attend school shall be deemed to attain the age of fourteen or fifteen on the date prescribed for terminating school attendance next succeeding the fourteenth or fifteenth anniversary of his birth, as the case may be;
- (e) A person who assists in a trade or occupation carried on for profit shall be deemed to be employed notwithstanding that he receives no reward for his labour; and
- (f) A chorister taking part in a religious service or in a choir practice for a religious service shall not, whether he receives any reward or not, be deemed to be employed.

### 38 Savings

- (1) The provisions of this Part of this Act imposing restrictions on employment or on the taking part by children in entertainments, and the provisions of any byelaws made thereunder shall not apply in relation to a person who has attained the age of twelve years taking part in a performance, whether of the nature of an entertainment or not, which is being broadcast by the British Broadcasting Corporation, so long as the public are not admitted thereto on payment.
- (2) The said provisions shall not affect the provisions of the Education (Scotland) Acts, 1872 to 1936, with respect to attendance at school or continuation classes.
- (3) The said provisions shall not apply to a person detained in an approved school.
- (4) The said provisions shall be in addition to and not in substitution for any enactments relating to employment in factories, workshops, mines and quarries, or for giving effect to any international convention regulating employment.
- (5) The said provisions shall, in their application to a person born on or before the first day of September, nineteen hundred and twenty-five, have effect as if paragraph (a) of the last foregoing section were omitted.
- (6) Sections twenty-eight and thirty-two of this Act shall not apply to a child in respect of whom an employment certificate granted under section two of the Education (Scotland) Act, 1936, is in force.
- (7) The provisions of paragraph (c) of subsection (1) of section twenty-eight of this Act as to the hour after which a child may not be employed shall not apply to employment in entertainments, in accordance with a licence granted under section thirty-two of this Act, of a child who has attained the age of fourteen years.