



# Education Act 1944 (repealed 1.11.1996)

1944 CHAPTER 31 7 and 8 Geo 6

## PART II

### THE STATUTORY SYSTEM OF EDUCATION

#### PRIMARY AND SECONDARY EDUCATION

##### *Compulsory Attendance at Primary and Secondary Schools*

#### 35 Compulsory school age.

In this Act the expression “compulsory school age” means any age between five years and [F1sixteen] years, and accordingly a person shall be deemed to be of compulsory school age if he has attained the age of five years and has not attained the age of [F1sixteen] years and a person shall be deemed to be over compulsory school age as soon as he has attained the age of [F1sixteen] years:

Provided that, as soon as the Minister is satisfied that it has become practicable to raise to sixteen the upper limit of the compulsory school age, he shall lay before Parliament the draft of an Order in Council directing that the foregoing provisions of this section shall have effect as if for references therein to the age of fifteen years there were substituted references to the age of sixteen years; and unless either house of Parliament, within the period of forty days beginning with the the day on which any such draft as aforesaid is laid before it, resolves that the draft be not presented to His Majesty, His Majesty may by Order in Council direct accordingly. In reckoning any such period of forty days, no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

#### Textual Amendments

F1 Word substituted by virtue of [S.I. 1972/444, art. 2](#)

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**Modifications etc. (not altering text)**

- C1 S. 35 amended by [Education Act 1962 \(c. 12\), s. 9](#)
- C2 The proviso in s. 35 which is spent is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

**36 Duty of parents to secure the education of their children.**

It shall be the duty of the parent of every child of compulsory school age to cause him to receive efficient full-time education suitable to his age, ability, and aptitude [<sup>F2</sup>and to any special educational needs he may have], either by regular attendance at school or otherwise.

**Textual Amendments**

- F2 Words inserted by [Education Act 1981 \(c. 60, SIF 41:1\), s. 17](#)

**Modifications etc. (not altering text)**

- C3 S. 36 excluded by [Education \(Miscellaneous Provisions\) Act 1948 \(c. 40\), s. 4\(2\)](#)  
S. 36 excluded (1.10.1993) by 1993 c. 35, [s.203](#); S.I. 1993/1975, art. 9, [Sch. 1](#)
- C4 S. 36 excluded (*prosp.*) by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 30(1), 36(10), 108(2)(6), [Sch. 3 Part III para. 13\(1\), Sch. 14 para. 1\(1\)](#)

**37 School attendance orders.**

- (1) If it appears to a local education authority that the parent of any child of compulsory school age in their area is failing to perform the duty imposed on him by the last foregoing section, it shall be the duty of the authority to serve upon the parent a notice requiring him, within such time as may be specified in the notice not being less than fourteen days from the service thereof, to satisfy the authority that the child is receiving efficient full-time education suitable to his age, ability, and aptitude [<sup>F3</sup>and to any special educational needs he may have] either by regular attendance at school or otherwise.
- (2) If, after such a notice has been served upon a parent by a local education authority, the parent fails to satisfy the authority in accordance with the requirements of the notice that the child to whom the notice relates is receiving efficient full-time education suitable to his age, ability, and aptitude [<sup>F3</sup>and to any special educational needs he may have], then, if in the opinion of the authority it is expedient that he should attend school, the authority shall serve upon the parent an order in the prescribed form (hereinafter referred to as a “school attendance order”) requiring him to cause the child to become a registered pupil at a school named in the order . . . <sup>F4</sup>.
- (3) . . . . . <sup>F5</sup>
- (4) If at any time while a school attendance order is in force with respect to any child the parent of the child makes application to the local education authority by whom the order was made . . . <sup>F4</sup> requesting that the order be revoked on the ground that arrangements have been made for the child to receive efficient full-time education suitable to his age, ability, and aptitude [<sup>F3</sup>and to any special educational needs he may have] otherwise than at school, the authority shall . . . <sup>F6</sup> revoke the order in compliance

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with the request unless they are of opinion . . . <sup>F6</sup> that no satisfactory arrangements have been made for the education of the child otherwise than at school . . . <sup>F6</sup>; and if a parent is aggrieved by a refusal of the authority to comply with any such request, he may refer the question to the [<sup>F7</sup>Secretary of State for Education and Science], who shall give such direction thereon as he thinks fit.

- (5) If any person upon whom a school attendance order is served fails to comply with the requirements of the order, he shall be guilty of an offence against this section unless he proves that he is causing the child to receive efficient full-time education suitable to his age, ability, and aptitude [<sup>F3</sup>and to any special educational needs he may have] otherwise than at school.
- (6) If in proceedings against any person for a failure to comply with a school attendance order that person is acquitted, the court may direct that the school attendance order shall cease to be in force, but without prejudice to the duty of the local education authority to take further action under this section if at any time the authority are of opinion that having regard to any change of circumstances it is expedient so to do.
- (7) Save as provided by the last foregoing subsection, a school attendance order made with respect to any child shall, subject to any amendment thereof which may be made by the local education authority, continue in force so long as he is of compulsory school age unless revoked by that authority.

#### Textual Amendments

- F3** Words inserted by [Education Act 1981 \(c. 60, SIF 41:1\), s. 21, Sch. 3 para. 2](#)
- F4** Words repealed by [Education Act 1981 \(c. 60, SIF 41:1\), s. 21, Sch. 4](#) (subject to a saving in [S.I. 1983/7, Sch. para. 4](#))
- F5** [S. 37\(3\)](#) repealed by [Education Act 1981 \(c. 60, SIF 41:1\), s. 21, Sch. 4](#) (subject to a saving in [S.I. 1983/7, Sch. para. 4](#))
- F6** Words repealed by [Education Act 1981 \(c. 60, SIF 41:1\), s. 21, Sch. 4](#)
- F7** Words substituted by virtue of [S.I. 1964/490, art. 3\(2\)\(a\)](#)

#### Modifications etc. (not altering text)

- C5** [S. 37](#) amended by [Education \(Miscellaneous Provisions\) Act 1948 \(c. 40\), s. 9](#)
- C6** [S. 37](#) amended by [Education Act 1980 \(c. 20, SIF 41:1\), s. 10\(1\)\(5\)](#)
- C7** [S. 37](#) modified by [Education Act 1980 \(c. 20, SIF 41:1\), s. 10\(5\)–\(7\)](#)
- C8** [S. 37](#) modified by [Education Act 1981 \(c. 60, SIF 41:1\), ss. 15, 16](#)
- C9** [S. 37](#) excluded (*prosp.*) by [Children Act 1989 \(c.41, SIF 20\), ss. 30\(1\), 36\(10\), 108\(2\)\(6\), Sch. 3 Part III para. 13\(2\)\(b\)\(i\), Sch. 14 para. 1\(1\)](#)
- C10** [S. 37\(4\)](#) amended by [Education Act 1980 \(c. 20, SIF 41:1\), s. 11\(3\)](#)

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<sup>F8</sup> .....

#### Textual Amendments

- F8** [S. 38](#) repealed by [Education Act 1981 \(c. 60, SIF 41:1\), s. 21, Sch. 4](#)

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### 39 Duty of parents to secure regular attendance of registered pupils.

- (1) If any child of compulsory school age who is a registered pupil at a school fails to attend regularly thereat, the parent of the child shall be guilty of an offence against this section.
- (2) In any proceedings for an offence against this section in respect of a child who is not a boarder at the school at which he is a registered pupil, the child shall not be deemed to have failed to attend regularly at the school by reason of his absence therefrom with leave or—
  - (a) at any time when he was prevented from attending by reason of sickness or any unavoidable cause;
  - (b) on any day exclusively set apart for religious observance by the religious body to which his parent belongs;
  - (c) if the parent proves that the school at which the child is a registered pupil is not within walking distance of the child's home, and that no suitable arrangements have been made by the local education authority either for his transport to and from the school or for boarding accommodation for him at or near the school or for enabling him to become a registered pupil at a school nearer to his home.
- (3) Where in any proceedings for an offence against this section it is proved that the child has no fixed abode, paragraph (c) of the last foregoing subsection shall not apply, but if the parent proves that he is engaged in any trade or business of such a nature as to require him to travel from place to place and that the child has attended at a school at which he was a registered pupil as regularly as the nature of the trade or business of the parent permits, the parent shall be acquitted:  
 Provided that, in the case of a child who has attained the age of six years, the parent shall not be entitled to be acquitted under this subsection unless he proves that the child has made at least two hundred attendances during the period of twelve months ending with the date on which the proceedings were instituted.
- (4) In any proceedings for an offence against this section in respect of a child who is a boarder at the school at which he is a registered pupil, the child shall be deemed to have failed to attend regularly at the school if he is absent therefrom without leave during any part of the school term at a time when he was not prevented from being present by reason of sickness or any unavoidable cause.
- (5) In this section the expression “leave” in relation to any school means leave granted by any person authorised in that behalf by the . . . <sup>F9</sup> governors or proprietor of the school, and the expression “walking distance” means, in relation to a child who has not attained the age of eight years two miles, and in the case of any other child three miles, measured by the nearest available route.

#### Textual Amendments

**F9** Word repealed by [Education Act 1980 \(c. 20, SIF 41:1\)](#), s. 1(3), **Sch. 1 para. 10**

#### Modifications etc. (not altering text)

**C11** S. 39 amended by [Education \(Miscellaneous Provisions\) Act 1948 \(c. 40\)](#), s. 9

**C12** S. 39 excluded (*prosp.*) by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 30(1), 36(10), 108(2)(6), **Sch. 3 Part III para. 13(1)**, **Sch. 14 para. 1(1)**

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#### **40 Enforcement of school attendance.**

(1) Subject to the provisions of this section, any person guilty of an offence against section thirty-seven or section thirty-nine of this Act shall be liable on summary conviction, in the case of a first offence against that section to a fine not exceeding [F10£200], in the case of a second offence against that section to a fine not exceeding [F10£200], and in the case of a third or subsequent offence against that section to a fine not exceeding [F10£200] or to imprisonment for a term not exceeding one month or to both such fine and such imprisonment.

[F11(2) Proceedings for such offences as aforesaid shall not be instituted except by a local education authority; and before instituting such proceedings the authority shall consider whether it would be appropriate, instead of or as well as instituting the proceedings, to bring the child in question before a juvenile court under section 1 of the M1Children and Young Persons Act 1969.

(3) The court by which a person is convicted of an offence against section 37 of this Act or before which a person is charged with an offence against section 39 of this Act may if it thinks fit direct the authority who instituted the proceedings to bring the child to whom the proceedings relate before a juvenile court under the said section 1; and it shall be the duty of the authority to comply with the direction.

(4) Where a child in respect of whom a school attendance order is in force is brought before a juvenile court by a local education authority under the said section 1 and the court finds that the condition set out in subsection (2)(e) of that section is not satisfied with respect to him, the court may direct that the order shall cease to be in force.]

##### **Textual Amendments**

**F10** Words substituted by [Criminal Law Act 1977 \(c. 45\), s. 31\(1\), Sch. 6](#)

**F11** [S. 40\(2\)-\(4\)](#) substituted for [s. 40\(2\)-\(5\)](#) by [Children and Young Persons Act 1969 \(c. 54\), Sch. 5 para. 13](#)

##### **Marginal Citations**

**M1** [1969 c. 54.](#)

#### **40A** <sup>F12</sup> .....

##### **Textual Amendments**

**F12** [S. 40A](#) repealed by [Children and Young Persons Act 1969 \(c. 54\), s. 72\(4\), Sch. 6](#)

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