



# Education (Scotland) Act 1980

## 1980 CHAPTER 44

### PART II

#### RIGHTS AND DUTIES OF PARENTS AND FUNCTIONS OF EDUCATION AUTHORITIES IN RELATION TO INDIVIDUAL PUPILS

##### *Failure of parents to provide education for their children*

#### **35 Failure by parent to secure regular attendance by his child at a public school.**

- (1) Where a child of school age who has attended a public school on one or more occasions fails without reasonable excuse to attend regularly at the said school, then, unless the education authority have consented to the withdrawal of the child from the school (which consent shall not be unreasonably withheld), his parent shall be guilty of an offence against this section.
- (2) For the purposes of this section, a child who has been required to discontinue for any period his attendance at a school on account of his parent's refusal or failure to comply with the rules, regulations or disciplinary requirements of the school, shall, unless the court otherwise determines, be deemed to have failed without reasonable excuse to attend regularly at the school.

#### **36 Power of education authority in relation to irregular attendance of child at a public school.**

- (1) It shall be the duty of the education authority if they consider that a parent has committed an offence against section 35 of this Act in respect of a child resident in their area, to serve a notice on the parent requiring him, within such time as may be specified in the notice (not being less than forty-eight hours or more than seven days from the service thereof) to appear (with or without the child) before the authority and explain the reason for the absence of the child from school. If the parent fails to satisfy the authority that he had a reasonable excuse, the authority may

*Status: Point in time view as at 14/12/2009.*

*Changes to legislation: Education (Scotland) Act 1980, Cross Heading: Failure of parents to provide education for their children is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- [<sup>F1</sup>(a)] instruct that he be prosecuted forthwith under section 43 of this Act, [<sup>F2</sup>in the court of summary jurisdiction in which proceedings may be taken for the offence <sup>F3</sup>...; or
- (b) report the circumstances to the procurator fiscal or] warn the parent and postpone for a period not exceeding six weeks a decision as to whether [<sup>F4</sup>so to report].
- (2) Where an education authority in the exercise of the powers conferred upon them by subsection (1) above postpone a decision as to whether to prosecute a parent, they may, if the child is still of school age, make an attendance order in respect of the child in accordance with the provisions of section 38 of this Act requiring the parent to cause the child to attend the public school which he has been attending, or, if the child has changed his residence, a school attended by children residing in the same neighbourhood as the child.
- (3) Without prejudice to the institution of proceedings for an offence against section 35 of this Act or the exercise of the power conferred by section 44(1) of this Act, where a child of school age has failed to attend a public school regularly, the education authority [<sup>F5</sup>, where no requirement arises under section 53(1) of the Children (Scotland) Act 1995 to give information about the child to the Principal Reporter, may under this subsection provide the Principal Reporter with such information.]

#### Textual Amendments

- F1** S. 36(1): “(a)” inserted (9.8.2000) by 2000 asp 9, s. 12, **Sch. para. 3(1)(a)(i)**
- F2** Words and paragraph (b) substituted for words in s. 36(1) (9.8.2000) by 2000 asp 9, s. 12, **Sch. para. 3(1)(a)(ii)**
- F3** Words in s. 36(1)(a) repealed (10.3.2008 for specified purposes, 2.6.2008 for specified purposes, 8.12.2008 for specified purposes, 23.2.2009 for specified purposes, 14.12.2009 for specified purposes, 22.2.2010 in so far as not already in force) by **Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), s. 84(1), sch. para. 4(a); S.S.I. 2008/42, art. 3, sch.; S.S.I. 2008/192, art. 3, sch.; S.S.I. 2008/329, art. 3, sch.; S.S.I. 2008/362, art. 3, sch.; S.S.I. 2009/432, art. 3, schs. 1, 2**
- F4** Words in s. 36(1) substituted (9.8.2000) by 2000 asp 9, s. 12, **Sch. para. 3(1)(b)**
- F5** Words in s. 36(3) substituted (1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 28(2); S.I. 1996/3201, art. 3(7).**

### 37 Power of education authority where not satisfied that parent is providing efficient education for his child.

- (1) Where a child of school age has not attended a public school in the area in which his parent is residing, or has attended such a school and has been withdrawn therefrom with the consent of, or excluded by, the education authority, then, if the authority are not satisfied that the parent is providing efficient education for him suitable to his age, ability and aptitude, it shall be the duty of the authority to serve a notice on the parent requiring him within such time as may be specified in the notice (not being less than seven or more than fourteen days from the service thereof) either—
- (a) to appear (with or without the child) before the authority and give such information as the authority may require regarding the means, if any, he has adopted for providing education, or
- (b) in the option of the parent, to give such information to the authority in writing.

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- (2) If a parent on whom a notice has been served in pursuance of subsection (1) above fails to satisfy the authority that he is providing efficient education for the child suitable to his age, ability and aptitude or that there is reasonable excuse for his failure to do so, the authority shall make an attendance order in respect of the child in accordance with the provisions of section 38 of this Act.

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