



Children and Young Persons (Scotland) Act 1937

1937 CHAPTER 37

PART II

PREVENTION OF CRUELTY AND EXPOSURE TO MORAL AND PHYSICAL DANGER

Offences

12 Cruelty to persons under sixteen

- (1) If any person who has attained the age of sixteen years and has the custody, charge, or care of any child or young person under that age, wilfully assaults, ill-treats, neglects, abandons, or exposes him, or causes or procures him to be assaulted, ill-treated, neglected, abandoned, or exposed, in a manner likely to cause him unnecessary suffering or injury to health (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement), that person shall be guilty of an offence, and shall be liable—
 - (a) on conviction on indictment, to a fine not exceeding one hundred pounds, or alternatively, or in default of payment of such a fine, or in addition thereto, to imprisonment for any term not exceeding two years;
 - (b) on summary conviction, to a fine not exceeding twenty-five pounds, or alternatively, or in default of payment of such a fine, or in addition thereto, to imprisonment for any term not exceeding six months.
- (2) For the purposes of this section—
 - (a) a parent or other person legally liable to maintain a child or young person shall be deemed to have neglected him in a manner likely to cause injury to his health if he has failed to provide adequate food, clothing, medical aid or lodging for him, or if, having been unable otherwise to provide such food, clothing, medical aid or lodging, he has failed to take steps to procure it to be provided under the Acts relating to the relief of the poor;

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- (b) where it is proved that the death of a child under three years of age was caused by suffocation (not being suffocation caused by disease or the presence of any foreign body in the throat or air passages of the child) while the child was in bed with some other person who has attained the age of sixteen years, that other person shall, if he was, when he went to bed, under the influence of drink, be deemed to have neglected the child in a manner likely to cause injury to his health.
- (3) A person may be convicted of an offence under this section—
- (a) notwithstanding that actual suffering or injury to health, or the likelihood of actual suffering or injury to health, was obviated by the action of another person;
 - (b) notwithstanding the death of the child or young person in question.
- (4) Where any person who has attained the age of sixteen years is tried on indictment for the culpable homicide of a child or young person under the age of sixteen years of whom he had the custody, charge, or care, it shall be lawful for the jury, if they are satisfied that he is guilty of an offence under this section, to find him guilty of that offence.
- (5) If it is proved that a person convicted under this section was directly or indirectly interested in any sum of money accruing or payable in the event of the death of the child or young person, and had knowledge that that sum of money was accruing or becoming payable, then—
- (a) in the case of a conviction on indictment, the maximum amount of the fine which may be imposed under this section shall be two hundred pounds, and the court shall have power, in lieu of inflicting any other penalty under this section, to sentence the person convicted to penal servitude for any term not exceeding five years; and
 - (b) in the case of a summary conviction, the court in determining the sentence to be pronounced shall take into consideration the fact that the person was so interested and had such knowledge.
- (6) For the purposes of the last foregoing subsection—
- (a) a person shall be deemed to be directly or indirectly interested in a sum of money if he has any share in or any benefit from the payment of that money, notwithstanding that he may not be a person to whom it is legally payable; and
 - (b) a copy of a policy of insurance, certified to be a true copy by an officer or agent of the insurance company granting the policy, shall be evidence that the child or young person therein stated to be insured has in fact been so insured, and that the person in whose favour the policy has been granted is the person to whom the money thereby insured is legally payable.
- (7) Nothing in this section shall be construed as affecting the right of any parent, teacher, or other person having the lawful control or charge of a child or young person to administer punishment to him.

13 Causing, encouraging or favouring seduction or prostitution of girl under sixteen

- (1) If any person having the custody, charge, or care of a girl under the age of sixteen years causes or encourages the seduction, unlawful carnal knowledge, or prostitution of, or the commission of an indecent assault upon, her, he shall be guilty of an offence and

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shall be liable on conviction on indictment to imprisonment for any term not exceeding two years, or on summary conviction to imprisonment for any term not exceeding three months.

- (2) For the purposes of this section, a person shall be deemed to have caused or encouraged the seduction, unlawful carnal knowledge, or prostitution of, or the commission of an indecent assault upon, a girl who has been seduced, unlawfully carnally known, or indecently assaulted, or who has become a prostitute, if he has knowingly allowed her to consort with, or to enter or continue in the employment of, any prostitute or person of known immoral character.
- (3) The foregoing provisions of this section shall apply to a contravention of section four of the Criminal Law Amendment Act, 1922, in like manner as they apply to an indecent assault, and any reference to the commission of such an assault or to being indecently assaulted shall be construed accordingly.

14 Allowing persons under sixteen to be in brothels

- (1) If any person having the custody, charge, or care of a child or young person who has attained the age of four years and is under the age of sixteen years, allows that child or young person to reside in or to frequent a brothel, he shall be guilty of an offence and shall be liable on conviction on indictment, or on summary conviction, to a fine not exceeding twenty-five pounds, or alternatively, or in default of payment of such a fine, or in addition thereto, to imprisonment for any term not exceeding six months.
- (2) Nothing in this section shall affect the liability of a person to be indicted under section six of the Criminal Law Amendment Act, 1885, but upon the trial of a person under that section it shall be lawful for the jury, if they are satisfied that he is guilty of an offence under this section, to find him guilty of that offence.

15 Causing or allowing persons under sixteen to be used for begging

- (1) If any person causes or procures any child or young person under the age of sixteen years or, having the custody, charge, or care of such a child or young person, allows him, to be in any street, premises, or place for the purpose of begging or receiving alms, or of inducing the giving of alms (whether or not there is any pretence of singing, playing, performing, offering anything for sale, or otherwise) he shall, on summary conviction, be liable to a fine not exceeding twenty-five pounds, or alternatively, or in default of payment of such a fine, or in addition thereto, to imprisonment for any term not exceeding three months.
- (2) If a person having the custody, charge, or care of a child or young person is charged with an offence under this section, and it is proved that the child or young person was in any street, premises, or place for any such purpose as aforesaid, and that the person charged allowed the child or young person to be in the street, premises, or place, he shall be presumed to have allowed him to be in the street, premises, or place for that purpose unless the contrary is proved.
- (3) If any person while singing, playing, performing or offering anything for sale in a street or public place has with him a child who has been lent or hired out to him, the child shall, for the purposes of this section, be deemed to be in that street or place for the purpose of inducing the giving of alms.

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16 Giving exciseable liquor to children under five

If any person gives, or causes to be given, to any child under the age of five years any exciseable liquor, except upon the order of a duly qualified medical practitioner, or in case of sickness, apprehended sickness, or other urgent cause, he shall, on summary conviction, be liable to a fine not exceeding three pounds.

17 Causing or allowing children to be in bars of licensed premises

- (1) The holder of the certificate of any licensed premises shall not allow a child to be at any time in the bar of the licensed premises during the permitted hours.
- (2) If the holder of a certificate acts in contravention of this section, or if any person causes, or procures, or attempts to cause or procure, any child to go to, or to be in, the bar of any licensed premises during the permitted hours, he shall be liable, on summary conviction, to a fine not exceeding, in respect of the first offence, forty shillings, and in respect of any subsequent offence, five pounds.
- (3) If a child is found in the bar of any licensed premises during the permitted hours, the holder of the certificate shall be deemed to have committed an offence under this section unless he shows that he had used due diligence to prevent the child being admitted to the bar or that the child had apparently attained the age of fourteen years.
- (4) Nothing in this section shall apply in the case of any child who is—
 - (a) a child of the certificate holder; or
 - (b) resident but not employed in the licensed premises; or
 - (c) in the bar of licensed premises solely for the purpose of passing to or from some other part of the premises, being a part to or from which there is no other convenient means of access or egress and not being itself a bar; or
 - (d) in any railway refreshment rooms or other premises constructed, fitted and intended to be used in good faith for any purpose to which the holding of a certificate is merely auxiliary.

18 Sale of tobacco, and c. to persons under sixteen

- (1) Any person who sells to a person apparently under the age of sixteen years any tobacco or cigarette papers, whether for his own use or not, shall be liable, on summary conviction, in the case of a first offence to a fine not exceeding two pounds, in the case of a second offence to a fine not exceeding five pounds, and in the case of a third or subsequent offence to a fine not exceeding ten pounds :

Provided that a person shall not be guilty of an offence under this section in respect of any sale of tobacco otherwise than in the form of cigarettes, if he did not know and had no reason to believe that the tobacco was for the use of the person to whom it was sold.

- (2) If on application to a court of summary jurisdiction it is proved to the satisfaction of the court that any automatic machine for the sale of tobacco kept on any premises is being extensively used by persons apparently under the age of sixteen years, the court may order the owner of the machine, or the person on whose premises the machine is kept, to take such precautions to prevent the machine being so used as may be specified in the order or, if necessary, to remove the machine, within such time as may be specified in the order, and if any person against whom such an order has been made fails to comply therewith, he shall be liable, on summary conviction, to a fine not exceeding

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five pounds, and to a further fine not exceeding one pound for each day during which the offence continues.

- (3) It shall be the duty of a constable and of a park-keeper being in uniform to seize any tobacco or cigarette papers in the possession of any person apparently under the age of sixteen years whom he finds smoking in any street or public place, and any tobacco or cigarette papers so seized shall be disposed of, if seized by a constable, in such manner as the police authority may direct, and if seized by a park-keeper, in such manner as the authority or person by whom he was appointed may direct.
- (4) Nothing in this section shall make it an offence to sell tobacco or cigarette papers to, or shall authorise the seizure of tobacco or cigarette papers in the possession of, any person who is at the time employed by a manufacturer of or dealer in tobacco, either wholesale or retail, for the purposes of his business, or is a boy messenger in uniform in the employment of a messenger company and employed as such at the time.
- (5) For the purposes of this section the expression " tobacco" includes cigarettes and smoking mixtures intended as a substitute for tobacco, and the expression " cigarettes " includes cut tobacco rolled up in paper, tobacco leaf, or other material in such form as to be capable of immediate use for smoking.

19 Taking pawns from persons under fourteen

If a pawnbroker takes an article in pawn from any person apparently under the age of fourteen years, whether offered by that person on his own behalf or on behalf of any other person, he shall be guilty of an offence against the Pawnbrokers Act, 1872.

20 Purchase of old metals from persons under sixteen

- (1) If a dealer in old metal as defined by the Prevention of Crimes Act, 1871, or a marine store dealer within the meaning of Part IX of the Merchant Shipping Act, 1894, purchases from any person apparently under the age of sixteen years any old metal, whether offered for sale by that person on his own behalf or on behalf of any other person, he shall be liable on summary conviction to a fine not exceeding five pounds.
- (2) For the purposes of this section " old metal " includes scrap metal, broken metal, or partly manufactured metal goods, and old or defaced metal goods.

21 Punishment of vagrants preventing children from receiving education

- (1) If a person habitually wanders from place to place and takes with him any child who has attained the age of five years, he shall, unless he proves that the child is totally exempted from school attendance or that the child is not, by being so taken with him, prevented from receiving efficient education, be liable on summary conviction to a fine not exceeding with expenses twenty shillings.
- (2) Any constable who finds a person wandering from place to place and taking a child with him may, if he has reasonable ground for believing that the person is guilty of an offence under this section, apprehend him without a warrant, and may take the child to a place of safety in accordance with the provisions of this Act.
- (3) Without prejudice to the requirements of the Education (Scotland) Acts, 1872 to 1936, as to school attendance or to proceedings thereunder, this section shall not, during the months of April to September inclusive, apply to any child whose parent or guardian

is engaged in a trade or business of such a nature as to require him to travel from place to place, if a certificate has been obtained that the child has made not less than two hundred attendances at a public school during the months of October to March immediately preceding.

22 Exposing children under seven to risk of burning

If any person who has attained the age of sixteen years, having the custody, charge, or care of any child under the age of seven years, allows the child to be in any room containing an open fire grate not sufficiently protected to guard against the risk of his being burnt or scalded without taking reasonable precautions against that risk, and by reason thereof the child is killed or suffers serious injury, he shall on summary conviction be liable to a fine not exceeding ten pounds :

Provided that neither this section, nor any proceedings taken thereunder, shall affect any liability of any such person to be proceeded against by indictment for any indictable offence.

23 Failing to provide for safety of children at entertainments

- (1) Where there is provided in any building an entertainment for children, or an entertainment at which the majority of the persons attending are children, then, if the number of children attending the entertainment exceeds one hundred, it shall be the duty of the person providing the entertainment to station and keep stationed wherever necessary a sufficient number of adult attendants, properly instructed as to their duties, to prevent more children or other persons being admitted to the building, or to any part thereof, than the building or part can properly accommodate, and to control the movement of the children and other persons admitted while entering and leaving the building or any part thereof, and to take all other reasonable precautions for the safety of the children.
- (2) Where the occupier of a building permits, for hire or reward, the building to be used for the purpose of an entertainment, he shall take all reasonable steps to secure the observance of the provisions of this section.
- (3) If any person on whom any obligation is imposed by this section fails to fulfil that obligation, he shall be liable, on summary conviction, to a fine not exceeding, in the case of a first offence, fifty pounds, and in the case of a second or subsequent offence one hundred pounds, and also, if the building in which the entertainment is given is licensed under the Cinematograph Act, 1909, or under any of the enactments relating to the licensing of theatres and of houses and other places for music or dancing, the licence shall be liable to be revoked by the authority by whom the licence was granted.
- (4) A constable may enter any building in which he has reason to believe that such an entertainment as aforesaid is being, or is about to be, provided, with a view to seeing whether the provisions of this section are carried into effect, and an officer authorised for the purpose by an authority by whom licences are granted under any of the enactments referred to in the last foregoing subsection shall have the like power of entering any building so licensed by that authority.
- (5) It shall be the duty of the council of any county or burgh to institute proceedings for any contravention of this section in a building within such county or burgh.
- (6) This section shall not apply to any entertainment given in a private dwelling-house.

Special Provisions as to Prosecutions for Offences specified in First Schedule

24 Power to take offenders into custody

- (1) Any constable may take into custody, without warrant—
 - (a) any person who within his view commits any of the offences mentioned in the First Schedule to this Act, if the constable does not know and cannot ascertain his name and address ;
 - (b) any person who has committed, or whom he has reason to believe to have committed, any of the offences mentioned in the First Schedule to this Act, if the constable does not know and cannot ascertain his name and address or has reasonable ground for believing that he will abscond.
- (2) Where, under the powers conferred by this section, a constable arrests any person without warrant, the superintendent or inspector of police or an officer of police of equal or superior rank, or the officer in charge of the police station to which the person is brought, shall, unless in his belief the release of the person would tend to defeat the ends of justice, or to cause injury or danger to the child or young person against whom the offence is alleged to have been committed, release the person arrested on his entering into an obligation to attend at the hearing of the charge or on his finding bail for such amount as may in the judgment of the officer of police be required to secure his attendance.

25 Mode of charging offences and limitation of time

- (1) Where a person is charged with committing any of the offences mentioned in the First Schedule to this Act in respect of two or more children or young persons, the same complaint or indictment may charge the offence in respect of all or any of them, but the person charged shall not, if he is summarily convicted, be liable to a separate penalty in respect of each child or young person except upon separate complaints.
- (2) The same complaint or indictment may also charge any person as having the custody, charge, or care, alternatively or together, and may charge him with the offences of assault, ill-treatment, neglect, abandonment, or exposure, together or separately, and may charge him with committing all or any of those offences in a manner likely to cause unnecessary suffering or injury to health, alternatively or together, but when those offences are charged together the person charged shall not, if he is summarily convicted, be liable to a separate penalty for each.
- (3) A person shall not be summarily convicted of an offence mentioned in the First Schedule to this Act, unless the offence was wholly or partly committed within six months before the proceedings against him in respect of the offence were commenced; but, subject as aforesaid, evidence may be taken of acts constituting, or contributing to constitute, the offence, and committed at any previous time.
- (4) When any offence mentioned in the First Schedule to this Act charged against any person is a continuous offence, it shall not be necessary to specify in the complaint or indictment the date of the acts constituting the offence.

26 Evidence of husband or wife of accused person

As respects proceedings against any person for any of the offences mentioned in the First Schedule to this Act, the Criminal Evidence Act, 1898, shall apply as if the

Schedule to that Act included references to the enactment under which the proceedings are taken.

Supplemental

27 Interpretation of Part II

For the purposes of this Part of this Act—

Any person who is the parent or legal guardian of a child or young person or who is legally liable to maintain him shall be presumed to have the custody of him, and as between father and mother the father shall not be deemed to have ceased to have the custody of him by reason only that he has deserted, or otherwise does not reside with, the mother and the child or young person;

Any person to whose charge a child or young person is committed by any person who has the custody of him shall be presumed to have charge of the child or young person;

Any other person having actual possession or control of a child or young person shall be presumed to have the care of him.