



# Children and Young Persons (Scotland) Act 1937

1937 CHAPTER 37 1 Edw 8 and 1 Geo 6

## PART III

### EMPLOYMENT

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

- C1 Pt III amended by [Education \(Scotland\) Act 1962 \(c. 47\), s. 139](#); extended by [Children and Young Persons Act 1963 \(c. 37\), s. 44\(2\)](#)

#### *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—

[<sup>F1</sup>(a) so long as he is under the age of [<sup>F2</sup>fourteen years];]

[<sup>F3</sup>(aa) to do any work other than light work; or]

(b) before the close of school hours on any day on which he is under obligation to attend school; or

[<sup>F4</sup>(c) before seven o'clock in the morning or after seven o'clock in the evening on any day; or]

(d) for more than two hours on any day on which he is under obligation to attend school; or

[<sup>F5</sup>(da) for more than twelve hours in any week in which he is required to attend school; or]

(e) for more than two hours on any Sunday; or

[<sup>F6</sup>(f) .....

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- [<sup>F7</sup>(g) for more than eight hours or, if he is under the age of fifteen years, for more than five hours in any day—
- (i) on which he is not required to attend school, and
  - (ii) which is not a Sunday; or
- (h) for more than thirty-five hours or, if he is under the age of fifteen years, for more than twenty-five hours in any week in which he is not required to attend school; or
- (i) for more than four hours in any day without a rest break of one hour; or
  - (j) at any time in a year unless at that time he has had, or could still have, during a period in the year in which he is not required to attend school, at least two consecutive weeks without employment.]

(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—
      - [<sup>F8</sup>(i) the employment [<sup>F9</sup>on an occasional basis] of children [<sup>F10</sup>aged thirteen years] (notwithstanding anything in paragraph (a) of the last foregoing subsection) by their parents or guardians in light agricultural or horticultural work];
    - [<sup>F11</sup>(ia) the employment of children aged thirteen years (notwithstanding anything in paragraph (a) of the last foregoing subsection) in categories of light work specified in the byelaw.]
      - (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.

[<sup>F12</sup>(2A) In this section—

“light work” means work which, on account of the inherent nature of the tasks which it involves and the particular conditions under which they are performed—

- (a) is not likely to be harmful to the safety, health or development of children; and
- (b) is not such as to be harmful to their attendance at school or to their participation in work experience in accordance with section 123 of the

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Education (Scotland) Act 1980 <sup>F13</sup>, or their capacity to benefit from the instruction received or, as the case may be, the experience gained;  
“week” means any period of seven consecutive days; and  
“year”, except in expressions of age, means a period of twelve months beginning with 1st January.]

[<sup>F14</sup>(3) Nothing in this section or in any byelaw made under this section shall prevent a child from [<sup>F15</sup>doing anything]—

- (a) under the authority of a licence granted under this Part of this Act; or
- (b) in a case where by virtue of section 37(3) of the <sup>M1</sup>Children and Young Persons Act 1963 no licence under that section is required for him to [<sup>F16</sup>do it].]

#### Textual Amendments

- F1** S. 28(1)(a) substituted by [Children Act 1972 \(c. 44\), s. 1\(2\)](#)
- F2** Words in s. 28(1)(a) substituted (4.8.1998) by [S.I. 1998/276, reg. 8\(1\)\(2\)\(a\)](#)
- F3** S. 28(1)(aa) inserted (4.8.1998) by [S.I. 1998/276, reg. 8\(1\)\(2\)\(b\)](#)
- F4** S. 28(1)(c) substituted by [Children and Young Persons Act 1963 \(c. 37\), s. 34](#)
- F5** [S. 28\(1\)\(da\)](#) inserted (18.4.2006) by [The Children \(Protection at Work\) \(Scotland\) Regulations 2006 \(S.S.I. 2006/140\), regs. 1\(1\), 2](#)
- F6** S. 28(1)(f) omitted (4.8.1998) by virtue of [S.I. 1998/276, reg. 8\(1\)\(2\)\(c\)](#) and repealed (31.12.1998) by [S.I. 1998/2857, reg. 1\(2\)\(b\)](#)
- F7** S. 28(1)(g)-(j) inserted (4.8.1998) by [S.I. 1998/276, reg. 8\(1\)\(2\)\(d\)](#)
- F8** S. 28(2)(a)(i) substituted by [Children Act 1972 \(c. 44\), s. 1\(2\)](#)
- F9** Words in s. 28(2)(a)(i) inserted (4.8.1998) by [S.I. 1998/276, reg. 8\(1\)\(3\)\(a\)](#)
- F10** Words in s. 28(2)(a)(i) substituted (9.6.2000) by [S.S.I. 2000/149, reg. 2\(1\)](#)
- F11** S. 28(2)(ia) inserted (4.8.1998) by [S.I. 1998/276, reg. 8\(1\)\(3\)\(b\)](#)
- F12** S. 28(2A) inserted (4.8.1998) by [1998/276, reg. 8\(1\)\(4\)](#)
- F13** Section 123 was amended by the [Self-Governing Schools etc. \(Scotland\) Act 1989 \(c.39\), Schedule 10, paragraph 8\(21\)](#).
- F14** S. 28(3) substituted by [Children and Young Persons Act 1963 \(c. 37\), Sch. 3 para. 29\(2\)](#)
- F15** Words in s. 28(3) substituted (4.8.1998) by [1998/276, reg. 8\(5\)\(a\)](#)
- F16** Words in s. 28(3)(b) substituted (4.8.1998) by [1998/276, reg. 8\(5\)\(b\)](#)

#### Marginal Citations

- M1** [1963 c. 37.](#)

29 ..... <sup>F17</sup>

#### Textual Amendments

- F17** [S. 29](#) repealed by [Employment Act 1989 \(c. 38, SIF 43:1\), ss. 10\(1\), 29\(4\), Sch. 3 Pt. I, Sch. 7 Pt. II](#)

### 30 Street trading.

[<sup>F18</sup>(1) Subject to subsection (2) of this section, no child shall engage or be employed in street trading.]

- (2) An education authority may make byelaws [<sup>F19</sup>authorising children who have attained the age of fourteen years to be employed by their parents in street trading to such extent

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as may be specified in the byelaws, and for regulating street trading under the byelaws by persons who are so authorised to be employed in such trading;]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;
- <sup>F20</sup>(b) . . . . .
- (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.

[<sup>F21</sup>(3) Byelaws made under subsection (2) shall contain provisions determining the days and hours during which, and the places at which, such persons may engage or be employed in street trading.]

#### Textual Amendments

**F18** S. 30(1) substituted by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), s. 10(2), **Sch. 3 Pt. III para. 9(a)**

**F19** Words substituted by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), s. 10(2), **Sch. 3 Pt. III para. 9(b)**

**F20** S. 30(2)(b) omitted (9.6.2000) by virtue of [S.S.I. 2000/149](#), **reg. 2(2)(a)**

**F21** S. 30(3) inserted (9.6.2000) by [S.S.I. 2000/149](#), **reg. 2(2)(b)**

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

**C2** S. 30 restricted by [Children and Young Persons Act 1963 \(c. 37\)](#), s. **35(2)**

### 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 [<sup>F22</sup>or regulations] 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 [<sup>F23</sup>level 3 on the standard scale]or, in the case of a second or subsequent offence, not exceeding [<sup>F23</sup>level 3 on the standard scale]:

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—
- (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

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- (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.

[<sup>F24</sup>(2A) Where a person is charged under this section with contravening section 28(1)(j) of this Act the proviso in subsection (1) of this section shall not apply, but it shall be a defence for him to prove that he used all due diligence to secure that section 28(1)(j) should be complied with.]

- (3) A [<sup>F25</sup>child], 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 [<sup>F23</sup>level 1 on the standard scale], or in the case of a second or subsequent offence, not exceeding [<sup>F23</sup>level 1 on the standard scale].

#### Textual Amendments

- F22** Words inserted (prosp.) by [Employment of Children Act 1973 \(c. 24\)](#), s. 3(4), **Sch. 1 Pt. I para. 6(a)**  
**F23** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **ss. 289E–289G**  
**F24** [S. 31\(2A\)](#) inserted (4.8.1998) by [S.I. 1998/276](#), **reg. 9**  
**F25** Word substituted by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), s. 10(2), **Sch. 3 Pt. III para. 10**

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

- C3** [S. 31\(1\)](#) extended by [Employment of Women, Young Persons, and Children Act 1920 \(c. 65, SIF 43:4\)](#), **s. 1(6)(a)** as substituted by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), s. 29(3), **Sch. 6 para. 1(a)**  
**C4** [S. 31\(2\)](#) extended by [Employment of Women, Young Persons, and Children Act 1920 \(c. 65, SIF 43:4\)](#), **s. 1(6)(a)** as substituted by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), s. 29(3), **Sch. 6 para. 1(a)**

### *Entertainments and Performances*

32 .....<sup>F26</sup>

#### Textual Amendments

- F26** **Ss. 32, 34(3)(5), 38(1)(2)(7)** repealed by [Children and Young Persons Act 1963 \(c. 37\)](#), s. 64, **Sch. 5**

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

[<sup>F27</sup>No person under the age of sixteen years, and no child aged sixteen years,] shall take part in any [<sup>F28</sup>performance to which [<sup>F29</sup>section 37(2)] of the <sup>M2</sup>Children and Young Persons Act 1963 applies and] in which his life or limbs are endangered and every person who causes or procures [<sup>F30</sup>such a person or child], 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 [<sup>F31</sup>level 3 on the standard scale] or, in the case of a second or subsequent offence, not exceeding [<sup>F31</sup>level 3 on the standard scale].

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#### Textual Amendments

- F27** Words in s. 33 substituted (9.6.2000) by S.S.I. 2000/149, **reg. 2(3)(a)**
- F28** Words substituted by [Children and Young Persons Act 1963 \(c. 37\)](#), **Sch. 3 para. 30**
- F29** Words in s. 33 substituted (4.8.1998) by S.I. 1998/276, **reg. 10**
- F30** Words in s. 33 substituted (9.6.2000) by S.S.I. 2000/149, **reg. 2(3)(b)**
- F31** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **ss. 289E–289G**

#### Marginal Citations

- M2** 1963 c. 37.

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

- (1) No [<sup>F32</sup>child]under the age of twelve years shall be trained to take part in performances of a dangerous nature, and no [<sup>F33</sup>child who has attained that age]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 [<sup>F34</sup>level 3 on the standard scale] or, in the case of a second or subsequent offence, not exceeding [<sup>F34</sup>level 3 on the standard scale].
- (2) An education authority may grant a licence for a [<sup>F35</sup>child who has attained the age of twelve years]to be trained to take part in performances of a dangerous nature.
- (3) ..... <sup>F36</sup>
- (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) ..... <sup>F36</sup>

#### Textual Amendments

- F32** Word substituted by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), s. 10(2), **Sch. 3 Pt. III para. 12 (a)(i)**
- F33** Words substituted by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), s. 10(2), **Sch. 3 Pt. III para. 12 (a)(ii)**
- F34** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **ss. 289E–289G**
- F35** Words substituted by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), s. 10(2), **Sch. 3 Pt. III para. 12 (b)**
- F36** **Ss. 32, 34(3)(5), 38(1)(2)(7)** repealed by [Children and Young Persons Act 1963 \(c. 37\)](#), s. 64, **Sch. 5**

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

- C5** S. 34 amended by [Children and Young Persons Act 1963 \(c. 37\)](#), s. **41(2)(3)**

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### Supplemental

#### 35 Byelaws.

- (1) A byelaw made under this Part of this Act shall not have effect until confirmed by the Secretary of State . . . <sup>F37</sup>
- (2) . . . . . <sup>F38</sup>
- (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 [<sup>F39</sup>Local Government (Scotland) Act 1973 (c. 65)], by a local authority may be proved, and [<sup>F40</sup>section 204] of that Act shall apply accordingly.

#### Textual Amendments

- F37** Words repealed by [Local Government \(Scotland\) Act 1947 \(c. 43\)](#), s. 381, **Sch. 14**
- F38** S. 35(2) repealed by [Local Government \(Scotland\) Act 1947 \(c. 43\)](#), s. 381, **Sch. 14**
- F39** Words in s. 35(3) substituted (26.1.2009) by [Public Health etc. \(Scotland\) Act 2008 \(asp 5\)](#), s. 128(2), **sch. 2 para. 2(a)** (with s. 127); S.S.I. 2009/9, art. 2(a), sch. 1
- F40** Words in s. 35(3) substituted (26.1.2009) by [Public Health etc. \(Scotland\) Act 2008 \(asp 5\)](#), s. 128(2), **sch. 2 para. 2(b)** (with s. 127); S.S.I. 2009/9, art. 2(a), sch. 1

#### 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 [<sup>F41</sup>or regulation] 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 [<sup>F42</sup>a performance], [<sup>F43</sup>being trained, taking part in a sport, or working as a model,] and to make inquiries therein with respect to that person.
- <sup>F44</sup>(2) Any authorised officer of the said authority or any constable may—
  - (a) at any time enter any place used as a broadcasting studio . . . <sup>F45</sup>or film studio or used for the recording of a performance with a view to its use in a [<sup>F46</sup>programme service]or in a film intended for public exhibition and make inquiries therein as to any children taking part in performances to which [<sup>F47</sup>subsection (2) of]section 37 of the <sup>M3</sup>Children and Young Persons Act 1963 applies;
  - (b) at any time during the currency of a licence granted under the said section 37 or under the provisions of this Part of this Act relating to training for dangerous performances enter any place (whether or not it is such a place as is mentioned in paragraph (a) of this subsection) where the person to whom the licence relates is authorised by the licence to [<sup>F48</sup>do anything] or to be trained, and may make inquiries therein with respect to the 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

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conviction in respect of each offence to a fine not exceeding [<sup>F49</sup>level 2 on the standard scale].

[<sup>F50</sup>(4) In this section—

“broadcasting studio” means a studio used in connection with the provision of a programme service;

“programme service” has the same meaning as in the Broadcasting Act 1990]

#### Textual Amendments

- F41** Words inserted (prosp.) by [Employment of Children Act 1973 \(c. 24\)](#), s. 3(4), **Sch. 1 Pt. I para. 7**
- F42** Words substituted by [Children and Young Persons Act 1963 \(c. 37\)](#), **Sch. 3 para. 31**
- F43** Words in s. 36(1) substituted (4.8.1998) by S.I. 1998/276, **reg. 11(a)**
- F44** S. 36(2) substituted by [Children and Young Persons Act 1963 \(c. 37\)](#), s. 43
- F45** Words inserted by [Cable and Broadcasting Act 1984 \(c. 46, SIF 96\)](#), s.57(1), **Sch. 5 para 5(1)** and repealed by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), s.203(1)(3), Sch. 12 Part II para. 1, Sch. 20 para. 4(1)(a), Sch. 21
- F46** Words substituted by virtue of [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), s.203(1)(3), Sch. 20 para. 4(1)(a)
- F47** Words in s. 36(2)(a) substituted (4.8.1998) by S.I. 1998/276, **reg. 11(b)**
- F48** Words in s. 36(2)(b) substituted (4.8.1998) by S.I. 1998/276, **reg. 11(c)**
- F49** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), s. 289G
- F50** S. 36(4) inserted by [Cable and Broadcasting Act 1984 \(c. 46, SIF 96\)](#) s. 57(1), Sch. 5 para. 5(2) (which is repealed by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), s. 203(3), **Sch. 21** the repeal being in force subject as mentioned in art. 3(3) of S.I. 1990/2347) and is substituted by virtue of s. 203(1), Sch. 20 para. 4(1)(b) of that 1990 Act

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

- C6** S. 36(1) extended by [Employment of Women, Young Persons, and Children Act 1920 \(c. 65, SIF 43:4\)](#), s. 1 (6)(a) as substituted by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), s. 29(3), **Sch. 6 para. 1(a)**
- C7** S. 36(3) extended by [Employment of Women, Young Persons, and Children Act 1920 \(c.65, SIF 43:4\)](#), s. 1 (6)(a) as substituted by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), s. 29(3), **Sch. 6 para. 1(a)**

#### Marginal Citations

- M3** 1963 c. 37.

### 37 Interpretation of Part III.

For the purposes of the foregoing provisions of this Part of this Act and of any byelaws [<sup>F51</sup>or regulations] made thereunder—

- [<sup>F52</sup>(a) The expression “child” means a person who is not for the purposes of the <sup>M4</sup>Education (Scotland) Act 1980 over school 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-blacking and other like occupations carried on in streets or public places;
- [<sup>F53</sup>(d) Any reference to a day on which a child is under obligation to attend school shall be construed as a reference to a day upon which a meeting of the school he is attending is held;]



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- (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;
- (g) ..... F54

**Textual Amendments**

- F51** Words inserted (prosp.) by [Employment of Children Act 1973 \(c. 24\)](#), s. 3(4), **Sch. 1 Pt. I para. 8**
- F52** S. 37(a) inserted by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), s. 10(2), **Sch. 3 Pt. III para. 13**
- F53** S. 37(d) substituted by [Education \(Scotland\) Act 1949 \(c. 19\)](#), **Sch. Pt. II** (which was repealed by [Education \(Scotland\) Act 1962 \(c. 47\)](#), **Sch. 8**)
- F54** S. 37(g) repealed by [Children and Young Persons Act 1963 \(c. 37\)](#), s. 64, **Sch. 5**

**Marginal Citations**

- M4** [1980 c.44 \(41:2\)](#).

**38 Savings.**

- (1) ..... F55
- (3) [<sup>F56</sup>The provisions of this Part of this Act relating to employment] shall not apply to a person detained in [<sup>F57</sup>a residential establishment where education is provided].
- (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) ..... F58
- (7) ..... F55

**Textual Amendments**

- F55** Ss. 32, 34(3)(5), 38(1)(2)(7) repealed by [Children and Young Persons Act 1963 \(c. 37\)](#), s. 64, **Sch. 5**
- F56** Words substituted by [Children and Young Persons Act 1963 \(c. 37\)](#), **Sch. 3 para. 32**
- F57** Words substituted by [Social Work \(Scotland\) Act 1968 \(c. 49\)](#), **Sch. 8 para. 6**
- F58** S. 38(5)(6) repealed by [Education \(Scotland\) Act 1945 \(c. 37\)](#), **Sch. 6**

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**Changes to legislation:**

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