

A Guide to Prevention of cruelty to, and protection of, Children Act 1889

The original legislation can be found on legislation.gov.uk.

The purpose of this guide is to give the reader an overview of the 1889 Act, which is the earliest children Act to be found on the government legislation site.

It is important to remember that this Act was written during the late 1800's when poor houses, work houses and wet nurses were predominant. Some of the items within the Act will appear strange to modern readers because they appear unnecessary in today's day and age.

1. Punishment for ill-treatment and neglect of children.

This section of the Act lays out the basics including the lowest age of a person who can be liable under this Act.

In layman's terms it states that anyone over the age of 16 who has custody, control or charge of a child is liable to the legislation. Furthermore, it also states child as pertaining to any male under 14 years of age and any female under 16 years of age. This immediately raises the question of why there is an age difference between male and female children and what exactly would happen if a male between 14-16 was being neglected or ill-treated. Isn't those 2 missing years for a male between 14 and 16 neglect in itself? Did that mean a 14-16-year-old male could neglect or ill-treat a child in his custody, control or charge without being classed as responsible for his Actions?

So, what was classed as child abuse within this section of the Act?

Wilfully causing ill-treatment, neglect, abandonment of a child. Exposing a child to the aforementioned, Causing the aforementioned and procuring a child to cause the aforementioned in a manner likely to cause the child unnecessary suffering and injury to the child's health. Is there such a thing as necessary suffering and or injury?

Abandonment should be an easy term to understand for most people in current society, was it as easy for people to understand in the late 1800's? would a carer of a child nip to the shops and leave children at home? Would someone in charge of a child or children gone to a show, date or pub leaving an older child in charge of younger children?

Ill-treatment is a broad term that can encompass many aspects of what we now understand as child abuse. However, ill-treatment in itself is difficult to fully decipher in regards to who's perception of ill-treatment. A poor family who mends and patch a child's clothes would state they are doing everything they can to ensure the child is dressed appropriately for the weather etc and yet others would class the patching and mending of a child's clothes as ill-treatment of the child. Would not being able to afford fresh fruit and vegetables be classed as ill-treatment under this legislation?

Neglect is another very broad term which causes controversy and has done from the 1800's to modern day. Many families and parents struggle to understand exactly what is classed as neglect due to the ever-changing definition of this aspect of abuse.

It is interesting to note that the obscurity of what these 3 types of abuse Actually entails is still prominent in current legislation. Many people believe this is deliberately obscure to create reasons for the removal of children that the parents cannot argue against in court because they do not

understand and is the basis for a lot of conspiracy theories. It would appear that because these types of abuse are obscure, they are left open for interpretation by the authorities. It should also be noted that in this legislation it states wilfully causing. This Act however does cover important aspects such as procuring a child and exposing a child, which are again still aspects within modern legislations.

Punishment within this legislation ranged from a misdemeanour to a custodial sentence up to and not exceeding 2 years with or without hard labour. Depending on the custodial sentence the perpetrator could also be fined between £25 for sentences under 3 months and £100 for the maximum 2-year sentence.

2. Power to increase fine where offender interested in death of child.

In short if a person was convicted of causing the death of a child in order to gain monies from the death of the aforementioned child the court could raise the fine from £100 to the maximum of £200.

Using a modern viewpoint and understanding of the legal system it would appear that the questions surrounding the monetary gains or knowledge of monetary gains resulting from the child's death would be incorporated into the jury by trial of the accused for the first time. However, on first reading of this section without an understanding of the legal system it reads as if the accused, once convicted of the child's death would then stand trial by jury in respect of the knowledge of or possibility of receiving monies as a direct result from the death of the child in order to set the amount of the fine.

3. Restrictions on employment of children.

A child, meaning male under the age of 14 or female under the age of 16 were not allowed to sell goods, perform or beg in the streets for alms (money) or be procured to sell goods, perform or beg in the streets. Secondly a male under 14 and female under 16 were not allowed or be procured to be either in the street or in a licenced premises and unless the licenced premises had an entertainment licence for the purpose of singing, dancing, playing, performing or selling anything for money between 10pm and 5am. Furthermore, any child under the age of 10 was not allowed to be procured or used to gain monies in the respect of the aforementioned at any time including premises licenced for entertainment including circuses.

So, a male over the age of 14 could easily be pressured or forced into selling goods, begging etc in any and all form at any time of the day or night, whereas a female was protected till the age of 16. Using the aforementioned age restrictions, a person could not have a child with them whilst they were begging, performing, selling goods for money as it could be seen that they were using the presence of the child as a way to gain monies.

If convicted of the above the adult could be sentenced to a maximum term of 3 months imprisonment with or without hard labour and, or a fine of up to £25.

However, the local authority could change the parameters of this section to extend or restrict the 10pm to 5am curfew whenever they wanted in either the whole district or just sub districts. Interestingly enough there's also a clause that means if a licenced entertainment facility or circus whereby as long as they could establish in petty sessional court or in relation to Scotland, the school board then special provisions could be made for children to work as long as they could be satisfied as to the kind treatment and health of the aforementioned child as long as that child was over the

age of 7 years of age. So, as long as they could prove the child's health and wellbeing were being taken into consideration, they could circumnavigate the legislation for over 7-year-olds.

The secretary of state could assign an inspector to undertake checks to ensure the legislation and any special provisions were being adhered to.

4. Taking of offenders into custody, and protection of a child.

A police officer can take someone suspected of committing an offense under this Act without a warrant if the name and address of the suspect was unknown to the police officer. Plus, a police officer can take a child to a place of safety if they believe they have been a victim as laid out in this legislation. The child can be detained in this place of safety till such time as the court decides if the accused is committed for trial, convicted or discharged. Whereby the court can then decide what happens to the child.

The legislation then goes on to say that a person arrested without a warrant can be bailed or held in custody depending on if they are considered an ongoing risk to the child to whom they have been arrested in regards to. Furthermore, the accused if bailed would need to attend the court upon start and during the hearing.

This is the earliest legislation available on the government website to implement such measures.

5. Disposal of a child by order of the court.

Where the suspect has been committed for trial, bound over to keep the peace towards the child or convicted of committing under section 1 of this Act that resulted in physical injury to the child the court can then dispose of the child. Meaning male under 14 and female under 16 years of age into the care of a relative of the child or another fit person named by the court. The relation or other fit person needing to undertake the responsibility and care of the child until the child turns 14 if male and 16 if female, possibly sooner. This order could be renewed, varied or revoked.

The person whom undertakes responsibility for the child via the court would have the same control over the child as if he was the parent of the child until such time as the order ends. (It is good to note that the wording here specifically states he not they. Which, suggests that only males were classed as a fit replacement for the parent.) The ne guardian of the child would also have to agree to paying for the child's needs, yet the original parent could also be charged maintenance for the child being looked after. Provisions are made in respect of the child's religion so that wherever possible the child is raised by someone with the same religious beliefs.

Lastly in this section is the power of the secretary of state, secretary in Scotland or Lord Lieutenant in Ireland to discharge a child from the custody of any person whom the child has been placed in the care of. They can also alter, or revoke the rules in relation to any child placed in the care of a person and the duties of the person with whom the child is placed.

6. Power of search.

A magistrate or two justices of the peace can Act on information provided to them in respect of a child being ill-treated and thereby issue a warrant for the named person to check and if needed remove the child from the custody of the person ill-treating said child. This has to be based on bona, fide information made before them under oath.

The magistrate, justices or Scottish sheriff can also issue a warrant for the arrest of anyone accused of committing aforementioned crimes against a child as per this legislation. The person named to

carry out the warrant to search for a child has the power to enter any house, building or property by force if needed and may remove the child from that place.

Lastly in this section it states that every warrant issued within this section shall be addressed and executed by an inspector, superintendent or other superior officer of the police who will accompany the person making the information. UNLESS directed by the magistrate, justices and then they can be accompanied by a medical practitioner.

7. Evidence of accused person.

In regards to this Act any person who is accused of an offence under this Act shall be competent but not compelled to give evidence and the accused husband or wife may be required to attend court to give evidence may also be competent but not compelled to give evidence as an ordinary witness

8. Evidence of child of tender years.

Basically, this section states that the victim of any crime as stated in this Act can depending on age and understanding give evidence in court but may do so without taking the oath in court. If the child is giving evidence without taking the oath and understands the duty of speaking the truth their evidence may be taken down in writing and submitted to the court.

Furthermore, the accused shall not be liable to conviction of the offense unless there is testimony given on behalf of the prosecution which is corroborated by material evidence in support thereby implicating the accused. Finally in this section it states that any evidence that is received that has been given falsely in respect of a child shall be liable for trial and punished under juvenile offenders.

Unfortunately, it does not state any liability or prosecution where false evidence is supplied by adults in respect to this legislation.

9. Presumption of age of child.

This states that if a child is alleged to be under a specified age and appears to be under the specified age the court will deem the child to be under that age unless it is proved to the contrary.

10. Appeal from summary conviction to general or quarter sessions.

Any person who has been convicted within the boundaries of this Act and they did not either plead guilty or admit the truth of the information, or any party who believes himself aggrieved by any order made by the court can appeal against the decision, order or conviction.

11. Expenses of prosecution.

A misdemeanour under this Act that is tried on indictment will be treated the same regarding expenses and defrayed in a manner like a felony case.

12. Guardians may pay costs of proceedings.

The guardians, union or parish may pay reasonable costs and expenses out of the funds under their control in relation to any proceedings they have directed to be sought in relation to ill-treatment under this Act. This includes ill-treatment, abandonment, neglect or exposure to the aforementioned and costs will be charged to the common fund.

13. Provisions as to byelaws.

The byelaws under this Act. This section makes little sense but it appears to indicate that each local authority is classed as a local authority. However, Her Majesty's principal secretaries of state for the local government board in England, Secretary for the Scotland board of supervision and lord Lieutenant for the Government board in Ireland become a separate issue or body.

14. Act not to take away right of parent &co to administer punishment.

There seems to be nothing in this Act that will be construed to take away or affect the right of any teacher, parent or anyone having the lawful control or charge of a child to administer punishment to the aforementioned child.

So, parents etc. still had the right to punish a child, even though ill-treatment, neglect etc is the reason behind this legislation.

15. Saving for proceedings under other laws

If an offense is punishable under another Act or common law it can either be tried under this legislation or the other legislation but can not be tried under both legislations. No person shall be punished twice for the same offence.

Does this mean that if an allegation has been covered in a legal case that it can not be cited in another legal case because it has already been dealt with?

16. Ss. 8,11 not to apply to Scotland

Sections 8 and 11 shall not apply to Scotland in regards to this Act.

17. Definitions.

Rather than going through each definition separately because this is a guide to rather than a revision of the Act it only needs to be stated what is defined as local authority.

Local authority is defined as any borough in England, the council of that borough. The city of London, common council as regards to the county of London. This seems to have been determined by the urban or rural sanitary authority. To be factually accurate as what areas were considered local authorities in the late 1800's research of parish records would need to be undertaken to establish if the local authorities referred to within this Act cover the same areas as Local authorities in today's society or if they were based on individual parishes.

18. Repeal of 31 & 32 Vict. C. 122s.37

This is in respect of the Poor law Amendment Act, 1868.

This is just a change of wording and or where sections of the cited Act were added to this Act or repealed from the Poor Law Amendment Act 1868.

19. Short title.

This basically just states the name of this Act.