

(b) in subsection (6), after “shall” there is inserted—

“(a) if it considers that the person is likely to pay the fine within a reasonable period of more than 28 days, impose the fine;

(b) in any other case”.

5 (3) In section 245A (restriction of liberty orders) of that Act, in subsection (1)—

(a) after “offence” in the first place where it appears there is inserted “punishable by imprisonment”;

(b) the words from “, if” to “disposal,” are repealed;

10 (c) after “may” there is inserted “, instead of imposing on him a sentence of, or including, imprisonment or any other form of detention,”.

(4) In Schedule 7 (which makes further provision in respect of supervised attendance orders) to that Act—

(a) in paragraph 4(2)(a)—

(i) for the words “three months” there is substituted “30 days”;

15 (ii) for the words “60 days” there is substituted “20 days”;

(b) in paragraph 5(1)(d)—

(i) for the words “three months” there is substituted “30 days”;

(ii) for the words “60 days” there is substituted “20 days”.

PART 7

20 CHILDREN

43 Physical punishment of children

(1) Where a person claims that something done to a child was a physical punishment carried out in exercise of a parental right or of a right derived from having charge or care of the child, then in determining any question as to whether what was done was, by virtue of being in such exercise, a justifiable assault a court must have regard to the following factors—

(a) the nature of what was done, the reason for it and the circumstances in which it took place;

(b) its duration and frequency;

30 (c) any effect (whether physical or mental) which it has been shown to have had on the child; and

(d) the child’s personal characteristics (including, without prejudice to the generality of this paragraph, sex, age and state of health) at the time the thing was done.

(2) The court may also have regard to such other factors as it considers appropriate in the circumstances of the case.

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(3) If what was done—

(a) was to a child who had not attained the age of three years; or

(b) included or consisted of—

- (i) a blow to the head;
- (ii) shaking; or
- (iii) the use of an implement,

5 the court must determine that it was not something which, by virtue of being in exercise of a parental right or of a right derived as is mentioned in subsection (1), was a justifiable assault; but this subsection is without prejudice to the power of the court so to determine on whatever other grounds it thinks fit.

(4) In subsection (1), “child” means a person who had not, at the time the thing was done, attained the age of sixteen years.

10 (5) In section 12 of the Children and Young Persons (Scotland) Act 1937 (c.37) (cruelty to persons under sixteen)—

- (a) in subsection (1), the words “assaults,” and “assaulted,” are repealed; and
- (b) subsection (7) is repealed.

44 Youth crime pilot study

15 (1) The Scottish Ministers may provide, by regulations, for the carrying out of a study into the consequences and practicalities of referring to the Principal Reporter to be dealt with by that officer, whether or not by arranging a children’s hearing to dispose of it, the case of a child of sixteen or seventeen years of age who has committed an offence, the case being one in respect of which such an arrangement could not, but for this section, be made.

(2) Without prejudice to the generality of subsection (1), regulations under that subsection—

- (a) are to prescribe areas where such arrangements are, for the purposes of the study, to be carried out; and
- (b) the duration of the study.

(3) In subsection (1), “Principal Reporter” and “children’s hearing” have the meanings given by section 93(1) of the Children (Scotland) Act 1995 (c.36); and the reference in that subsection to the Principal Reporter dealing with a case is without prejudice to section 131 of the Local Government etc. (Scotland) Act 1994 (c.39) (delegation of Principal Reporter’s functions).

(4) In section 73 of that Act of 1995 (duration and review of supervision requirement)—

- (a) in subsection (3), at the end there is added “but this subsection is subject to subsection (3A) below”; and
- (b) after subsection (3) there is inserted—

35 “(3A) For the purposes mentioned in section 93(2)(b)(ia) of this Act, subsection (3) above applies with the substitution of the word “nineteen” for the word “eighteen”.”.

(5) In section 93 of that Act (interpretation of Part II of the Act)—

- (a) in subsection (2)(b)—

- (i) after head (ii) of the definition of “child” there is inserted—