CHAPTER 40.

An Act to extend the powers of courts of summary jurisdiction as to the making of orders for the protection, custody, supervision and care of children and young persons, and for their temporary detention; to make further provision as to children and young persons in respect of whom such orders are made; and to amend the law as to the constitution of juvenile courts in the Metropolitan police court area. A.D. 1938.

[13th July 1938.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Enlargement of powers of juvenile courts under s. 64 of principal Act. 23 Geo. 5. c. 12.

1. The Children and Young Persons Act, 1933 (hereinafter referred to as "the principal Act") shall have effect as if the powers conferred on a juvenile court by section sixty-four of that Act (which enables a juvenile court to make certain orders in relation to refractory children and young persons) included a power to make (without making any other order, or in addition to making an order placing the child or young person under the supervision of a probation officer or of some other person appointed for the purpose by the court) an order committing the child or young person to the care of any fit person, whether a relative or not, who is willing to undertake the care of him.

A.D. 1938.

Supervision order in place of order committing to care of fit person.

2. The power of a juvenile court under section eighty-four of the principal Act to revoke an order committing a child or young person to the care of a fit person shall include a power to substitute for that order an order placing the child or young person, for a specified period not exceeding three years, under the supervision of a probation officer or of some other person appointed for the purpose by the court, and section sixty-six of the principal Act shall apply in relation to the substituted order as if it were an order made under Part III of that Act:

Provided that an order under the said section, placing a young person under the supervision of a probation officer or of some other person appointed for the purpose by the court, shall be of no effect after the time at which the person to whom the order relates attains the age of eighteen years.

Power of courts acting under Education Act, 1921, to make supervision orders. 11 & 12 Geo. 5. c. 51.

3.—(1) The powers of a court under section forty-five of the Education Act, 1921 (which determines the orders which may be made by a court on the hearing of a complaint of non-compliance with a school attendance order) shall include a power to make, with respect to the child in relation to whom such a complaint is made to the court, an order placing him, for a specified period not exceeding three years, under the supervision of a probation officer or of some other person appointed for the purpose by the court; and the court may make such an order either without making any other order or in addition to making an order committing the child to the care of a fit person.

(2) If a court before which any complaint of non-compliance with a school attendance order is duly made under section forty-five of the Education Act, 1921, is not in a position to decide what order ought to be made under that section with respect to the child to whom the complaint relates, the court may make such interim order as it thinks fit for his detention or continued detention in a place of safety.

An interim order under this subsection shall not remain in force for more than twenty-eight days; but if, at the expiration of that period, the court deems it expedient so to do, it may make a further interim order.

(3) Without prejudice to the effect of section one hundred and forty of the Education Act, 1921, the court before which a complaint is duly made under section forty-five of that Act, may authorise a person to bring before the court the child to whom the complaint relates.

Provisions which may be contained in, and variation and revocation of, supervision orders.

4.—(1) Any order made under section sixty-two, section sixty-four or section eighty-four of the principal Act, as amended by this Act, or under section forty-five of the Education Act, 1921, as so amended, placing a child or young person under the supervision of a probation officer or of some other person appointed for the purpose by the court, may contain such provisions (including provisions determining the place at which the child or young person is to reside), as the court, having regard to the particular circumstances of the case, considers necessary for effecting the purpose of the order:

Provided that—

(*a*) no such order shall—

(i) if it contains any such provisions with respect to residence, be made in relation to a young person, without the consent of that person, or

(ii) be made so as to require a person to reside in any institution which is not subject to inspection by the Secretary of State, unless the said person is, while residing in the institution, to be employed, or to seek employment, outside it;

(*b*) where such an order is made containing provisions requiring a person to reside in an institution—

(i) the court by which the order is made shall forthwith give notice of the terms of the order to the Secretary of State; and

(ii) the Secretary of State may at any time, if he considers that it is in the interests of that person so to do, cause an application to be made to any court having power to vary the order, and thereupon that court may vary the provisions of the order by excluding therefrom the provisions with

A.D. 1938.

respect to residence or by substituting the name of some other institution; and

(*c*) any provisions with respect to residence which are contained in such an order shall be of no effect after the time when the person to whom the order relates attains the age of eighteen years.

(2) The court by which an order, under any of the following sections, as amended by this Act, that is to say, sections sixty-two, sixty-three, sixty-four and eighty-four of the principal Act and section forty-five of the Education Act, 1921, is made after the commencement of this Act, placing a child or young person for a specified period under the supervision of a probation officer or of some other person appointed for the purpose by the court, may at any time, upon application made by any person before the end of that period,—

(*a*) substitute for the said period a period not exceeding three years from the beginning of the original period,

(*b*) (subject to the limitations imposed by the preceding subsection) vary the order, or

(*c*) if satisfied that the conduct of the child or young person has been such as to make it unnecessary that he any longer be under supervision, revoke the order;

and where any application under this subsection is duly made in relation to any person by the person under whose supervision he has been placed by such an order, the applicant may, for the purpose of the application, bring before the court the person who is the subject of the application, whether or not that person has attained the age of seventeen years.

(3) The court by which, under any of the sections mentioned in the last preceding subsection, such an order as is mentioned in that subsection is made after the commencement of this Act may by the order provide that the powers which, by that subsection, are conferred on that court with respect to the variation or revocation of the order may be exercised by any juvenile court acting for the petty sessional division or place in which the person to whom the order relates may for the time being reside.

Incidental powers of courts dealing with children and young persons.

5. Where any court before which a child or young person is brought upon an application for an order under any of the provisions of sections sixty-two to sixty-six of the principal Act, as amended by this Act, is not in a position to decide what order ought to be made, the court may (whether or not it also makes an interim order under subsection (2) of section sixty-seven of that Act) record a finding of the fact that the child or young person is in need of care or protection or is beyond the control of his parent or guardian, or is refractory, as the case may be; and the said record shall be admissible as evidence of that fact for the purpose of any further hearing of that application.

Power to deal with children and young persons who become in need of medical treatment while under detention.

6.—(1) Where, with respect to a child or young person who is being detained in a place of safety under an interim order having effect by virtue of subsection (2) of section sixty-seven of the principal Act, or by virtue of subsection (2) of section three of this Act, the court by which the order was made is satisfied, on any occasion that, by reason of illness or accident, he is unable to appear personally before the court, any further interim order which the court has power to make on that occasion, may be made in the absence of the child or young person.

(2) If at any time while there is in force an order made by a court under section thirty-three, section fifty-four, section sixty-seven, or section sixty-nine of the principal Act or under subsection (2) of section three of this Act for the detention of a child or young person in a remand home or in some other place of safety the child or young person is found, by reason of illness or accident, or for any other reason, to be in need of any medical treatment or examination which cannot properly be given or made in the remand home or other place of safety, the person in charge of the remand home or other place of safety, may remove the child or young person therefrom to any place of safety being a place in which the necessary treatment or examination can be given or made; and the order shall, so long as it remains in force—

(*a*) apply to the child or young person as if, whilst being so removed to the last-mentioned place of safety, whilst detained therein for the purpose of the giving of the treatment or the making of the examination, and whilst being taken back

A.D. 1938.

to the place from which he was so removed, he continued to be detained in the remand home or other place of safety specified in the order, and

(*b*) be deemed to authorise the child or young person to be taken to the court from any place to which he has lawfully been removed by virtue of this subsection.

(3) Whenever, in pursuance of the last preceding subsection, a child or young person is removed from any remand home or other place of safety for his detention in which such an order as is mentioned in that subsection has been made, being an order in force at the time of the removal, the person by whom he is so removed shall forthwith give written notice of the fact to the clerk of the court by which the order was made.

Constitution of juvenile courts in metropolitan police court area.

7. The following sub-paragraph shall be substituted for sub-paragraph (2) of paragraph 2 of the Second Schedule to the principal Act :—

"(2) Every juvenile court in the metropolitan police court area shall, according as the Secretary of State may direct,—

(*a*) be constituted of a metropolitan police magistrate nominated by the Secretary of State to act as a chairman of juvenile courts within the said area, and two justices of the peace for the county of London, both of whom shall be selected, in such manner as may be directed by Order in Council, from a panel of such justices nominated from time to time by the Secretary of State, or

(*b*) be constituted of three such justices of the peace so selected as aforesaid, one of whom shall be a person nominated by the Secretary of State to act as a chairman of juvenile courts within the said area;

and of the members of any juvenile court one at least shall be a man and one at least shall be a woman:

Provided that—

(i) if at any time, by reason of illness or other emergency, no person so nominated is available to act as chairman of a juvenile court, any metropolitan police magistrate (whether so nominated or not), or, with the consent of the Secretary of State, any justice of the peace selected from the said panel, may act temporarily as chairman; and

(ii) where it appears to the chairman that the court cannot, without adjournment, be fully constituted, and that the adjournment would be inexpedient in the interests of justice, the chairman may sit with one justice selected from the said panel (whether a man or a woman) or, if a metropolitan police magistrate, may sit alone."

Consequential amendments of principal Act and of Education Act, 1921.

8. The amendments specified in the Schedule to this Act, being amendments consequential upon the preceding provisions of this Act, shall be made in the principal Act and in the Education Act, 1921.

Short title, construction, citation, extent and commencement.

9.—(1) This Act may be cited as the Children and Young Persons Act, 1938, and shall be construed as one with the principal Act; and that Act and this Act may be cited together as the Children and Young Persons Acts, 1933 and 1938.

(2) This Act shall not extend to Scotland or Northern Ireland.

(3) This Act shall come into operation on the first day of October nineteen hundred and thirty-eight.

SCHEDULE.

Section 8.

CONSEQUENTIAL AMENDMENTS OF THE PRINCIPAL ACT AND OF THE EDUCATION ACT, 1921.

Amendments of the principal Act.

In section sixty-four after the words " appointed for the purpose by the court ", there shall be inserted the words " or " (without making any other order or in addition to making " such an order as is last mentioned) may commit him to the " care of any fit person, whether a relative or not, who is " willing to undertake the care of him,".

In section sixty-six, in subsection (1), after the word " Act " there shall be inserted the words " or under section eighty-four of this Act."

In section eighty-four, in subsection (6), after the word " residing " there shall be inserted the words " and the court by " which any such order is revoked may, upon the application of " any person, substitute for that order an order placing the " child or young person for a specified period not exceeding " three years, under the supervision of a probation officer or of " some other person appointed for the purpose by the court:

" Provided that an order under this subsection placing a " young person under the supervision of a probation officer or " of some other person appointed by the court shall be of no " effect after the time at which the person to whom the order " relates attains the age of eighteen years."

In the Third Schedule, the provisions substituting a section for section forty-five of the Education Act, 1921, shall cease to have effect.

Amendment of the Education Act, 1921.

For section forty-five there shall be substituted the following section:

Proceedings on disobedience of order of court for attendance at school.

" 45.—(1) Where a school attendance order is not complied with, without any reasonable excuse, a court of summary jurisdiction, on complaint made by the local education authority, may, if they think fit, order as follows:—

(*a*) in the first case of non-compliance if the parent of the child does not appear, or appears and fails to satisfy the court that he has used all reasonable efforts to enforce compliance with the order, the court may impose a fine not exceeding with

the costs twenty shillings; but if the parent satisfies the court that he has used all reasonable efforts as aforesaid, the court may, without inflicting a fine, order the child to be sent to an approved school or to be committed to the care of a fit person in accordance with the provisions of the Children and Young Persons Act, 1933, or (without making an order committing the child to the care of a fit person or in addition to making such an order) make an order placing the child, for a specified period not exceeding three years under the supervision of a probation officer or of some other person appointed for the purpose by the court; and

(*b*) in the second or any subsequent case of non-compliance with the order, the court may order the child to be sent to an approved school or to be committed to the care of a fit person in accordance with the provisions of the Children and Young Persons Act, 1933, or (without making an order committing the child to the care of a fit person or in addition to making such an order) make an order placing the child, for a specified period not exceeding three years, under the supervision of a probation officer or of some other person appointed for the purpose by the court, and may further in their discretion inflict any such fine as aforesaid, or they may for each such non-compliance inflict any such fine as aforesaid without dealing with the child as aforesaid:

Provided that a complaint under this section with respect to a continuing non-compliance with a school attendance order shall not be repeated by the local education authority at any less interval than two weeks.

(2) Where an order is made under this section either sending a child to an approved school, or committing him to the care of a fit person, or placing him under the supervision of a probation officer or of some other person appointed for the purpose by the court, the provisions of the Children and Young Persons Act, 1933, shall apply in relation to the order as if it were an order made under that Act."

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