

# Child Labour Resource Guide

Appendix 5 – Domestic law as a tool against child labour



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# Appendix 5

## Domestic law as a tool against child labour

In order to protect children, most countries have specified a minimum employment age. A number also have laws governing the employment of young people who have left school but are below 18, providing them with specific protection that is not available to adults. Yet the laws and regulations adopted at national level can seem confusing and in both developing and industrialised countries they are routinely flouted.

### Minimum age for employment in 131 countries (under the terms of international law)

Most countries have laws governing the employment of children, often stipulating a minimum age for entry into full-time employment. However, the specific legal terms vary from country to country.

ILO Convention No. 138 concerning the Minimum Age for Admission into Employment has been ratified by 131 countries.<sup>1</sup> They have stipulated different minimum ages for entry into full-time employment:

- 42 countries – 14 years
- 59 countries – 15 years
- 30 countries – 16 years

The minimum age set by governments is not always a direct reflection of what actually happens in the country concerned, nor of the level of its development, even though this is supposed to be the criterion for a country allowing children to start full-time work at 14 rather than 15. For example, Albania has stipulated 16 as the minimum age, although the minimum age for leaving school is younger and many 15-year-olds work full-time. Two more developed European countries, the Netherlands and Norway, have both chosen 15 years.

In principle, the minimum ages stipulated under Convention No 138 are the same as those specified under national legislation. However, national law is not automatically synchronised with a state's international treaty obligations, and businesses wishing to check up on the minimum age for entry into employment in a specific country must obtain information in the country concerned on its legal requirements.

### The complexities of the law in some countries

Even the Convention 138 contains a number of options, allowing children younger than the legal minimum age to earn money and work in some specific circumstances. This is reflected in the legislation of countries such as the UK in laws or regulations which allow children who are still obliged to attend school to work part-time, with the number of hours and timing often specified in the law.

The legislation in some countries goes much further and excludes whole sectors of employment from the scope of the law on minimum age for employment. This may mean that employers, parents and even law enforcement agencies are uncertain of what the requirements of the law are and ignore it as a result.

### India – domestic law on child labour

One example of such complexities is described in a report submitted by the Government of India to the Committee on the Rights of the Child,

<sup>101</sup> *The United Kingdom Committee for UNICEF  
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the UN body responsible for monitoring compliance with the Convention on the Rights of the Child.<sup>2</sup>

India's main legislation on child labour is The Child Labour (Prohibition and Regulation) Act, 1986. This Act prohibits children's employment in a series of occupations and processes. This was modified in January 1999 to add 6 more occupations and 33 processes, bringing the total to 13 occupations and 51 processes, respectively. The situation was summarised by the Government of India in the table on the next page.<sup>3</sup>

The implications of this legislation are not always clear to businesses or employers. Commenting in February 2004 on the situation in India, the Committee on the Rights of the Child noted that "household enterprises and government schools and training centres" were exempt from prohibitions on employing children under the terms of the 1986 Act, and called for the law to be amended to fill this gap.<sup>4</sup> As a consequence, private householders may employ children of any age as domestic servants in their houses, and there are no legislative limits on young children working for their own parents.

India has ratified a number of the ILO's early conventions concerning the employment of children in particular sectors, but has not ratified either Convention No 138 on the minimum age for entry into employment or Convention No 182 on the worst forms of child labour.

In its report to the Committee on the Rights of the Child, the Indian Government also mentioned a ruling by India's Supreme Court, in 1996,<sup>5</sup> which, it said, had given directions regarding the way in which children working in hazardous occupations are to be withdrawn and rehabilitated, and also the manner in which the working conditions of children working in non-hazardous occupations are to be regulated and improved. The judgement, the Government reported, makes a number of requirements, including:

- The payment of compensation amounting to 20,000 [Indian] Rupees by the offending employer for every child employed in contravention of the provisions of the 1986 Act [equivalent to US\$91 at the beginning of 2004];
- Constitution of a Child Labour Rehabilitation-cum-Welfare Fund to receive money paid as compensation and to make payments to former working children or their families;
- Giving alternative employment to an adult member of the family in place of the child withdrawn from the hazardous occupation or payment of an amount of 5,000 Rupees [equivalent to US\$22.75 at the beginning of 2004] for each child employed in hazardous employment, by the appropriate [State] Government;
- Payment of interest on the corpus of 25,000 Rupees (20,000 Rupees to be paid by the employer and 5,000 Rupees to be paid by the Government) to the family of the child withdrawn from work;
- Provision of education in a suitable institution for the child withdrawn from work.

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Employment of Children: protective legal provisions	
<p><b>Name of the Act</b></p> <ul style="list-style-type: none"> <li>● The Children (Pledging of Labour) Act, 1933</li> <li>● The Factories Act, 1948</li> <li>● The Mines Act, 1952</li> <li>● The Motor Transport Workers Act, 1961</li> <li>● The Child Labour (Prohibition and Regulation) Act, 1986</li> </ul>	<p><b>Protective provisions for children:</b></p> <p>Any agreement to pledge the labour of children is void. Employment of children under 14 years of age is prohibited under these various laws.</p> <p>Except in the process of family-based work or recognised school-based activities, children are not permitted to work in occupations concerned with:</p> <ul style="list-style-type: none"> <li>● Passenger, goods mail transport in railway</li> <li>● Carpet weaving</li> <li>● Cinder picking, cleaning of ash pits</li> <li>● Cement manufacturing</li> <li>● Building operation construction</li> <li>● Cloth printing</li> <li>● Dyeing, weaving</li> <li>● Manufacturing of matches, explosives, fireworks</li> <li>● Catering establishment in railway premises or port limits</li> <li>● Beedi making</li> <li>● Mica, cutting, splitting</li> <li>● Abattoirs</li> <li>● Hazardous process " and " dangerous operations as defined, notified in Section 2(cb) and Section 87 of the Factories Act 1948 respectively.</li> <li>● Wool cleaning</li> <li>● Printing, as defined in Section 2(k) of the Factories Act, 1948</li> <li>● Cashew and cashewnut descaling and processing</li> <li>● Soldering processes in electronic industries</li> </ul> <p>In occupations and processes other than the above mentioned, work by children is permissible only for six hours between 8am and 7pm with one day's weekly rest.</p> <p>Occupier of establishment employing children to give notice to local inspector and maintain prescribed register.</p>
The Plantation Labour Act, 1951	Children/adolescents are allowed to work 27 hours a week.
The Minimum Wages Act, 1948	Child work is not allowed during night i.e. 7pm to 6am. Children are permitted to work in plantation only where certificate of fitness is granted by a certifying surgeon. On completion of 15 days, leave with wages is to be allowed.

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The Government of India's report to the Committee on the Rights of the Child did not mention how many compensation payments had been made by employers under the terms of this judgement. However, it reported that on the basis of data collected during India's 1991 census, there were estimated to be 11.28 million working children in the country.

### European Union standards on the employment of young people

The countries belonging to the EU were required to adopt new minimum standards concerning under 18-year-old workers as a result of a Council Directive (issued by the Council of the European Union) 94/33/EC in 1994 on the Protection of Young People at Work.<sup>6</sup> This required all the EU's Member States (15 in 1994, increasing to 25 in May 2004) to:

...take the necessary measures to prohibit work by children. They shall ensure, under the conditions laid down by this Directive, that the minimum working or employment age is not lower than the minimum age at which compulsory full-time schooling as imposed by national law ends or 15 years in any event. (Article 1.1)

The Directive also requires Member States to take action to protect young people who are old enough to work. The general terms for this repeat existing international standards:

They shall ensure that young people are protected against economic exploitation and against any work likely to harm their safety, health or physical, mental, moral or social development or to jeopardise their education. (Article 1.3)

However, as in the case of so much other legislation concerning the employment of children, the Council Directive excludes certain categories of employment from its scope, notably:

(a) domestic service in a private household, or (b) work regarded as not being harmful, damaging or dangerous to young people in a family undertaking. (Article 2.2)

Provision is also made in Article 5 for "The employment of children for the purposes of performance in cultural, artistic, sports or advertising activities" to be subject to different regulations (prior authorisation to be given by the competent authority in individual cases.)

In order to protect the safety and health of young people at work, employers are required by the Directive to make an assessment of risks in the workplace and, if any risk is identified to their safety, physical or mental health, or development to provide regular free assessments and health checks.

To prevent young workers being involved in hazardous work, the Directive requires Member States to prohibit the employment of young people in :

a. work which is objectively beyond their physical or psychological capacity;

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- b. work involving harmful exposure to agents which are toxic, carcinogenic, cause heritable genetic damage, or harm to the unborn child or which in any other way chronically affect human health;
- c. work involving harmful exposure to radiation;
- d. work involving the risk of accidents which it may be assumed cannot be recognised or avoided by young persons owing to their insufficient attention to safety or lack of experience or training; or
- e. work in which there is a risk to health from extreme cold or heat, or from noise or vibration.<sup>7</sup>

However, the Directive allows for some exceptions if these are indispensable in the vocational training of the young people concerned, provided that protection of their safety and health is ensured by the fact that the work is performed under the supervision of someone formally labelled as "a competent person".

The Council Directive limits the number of hours per week that school children (Article 8.1) and young workers who have left school (Article 8.2) may work. For school children, the maximum working time allowed is:

- a. eight hours a day and 40 hours a week for work performed under a combined work/training scheme or an in-plant work experience scheme;
- b. two hours on a school day and 12 hours a week for work performed in term-time outside the hours fixed for school attendance, provided that this is not prohibited by national legislation and/or practice; in no circumstances may the daily working time exceed seven hours; this limit may be raised to eight hours in the case of children who have reached the age of 15;
- c. seven hours a day and 35 hours a week for work performed during a period of at least a week when school is not operating; these limits may be raised to eight hours a day and 40 hours a week in the case of children who have reached the age of 15;
- d. seven hours a day and 35 hours a week for light work performed by children no longer subject to compulsory full-time schooling under national law.

The maximum working time for young workers who have left school is fixed at eight hours a day and 40 hours a week. The Council Directive also stipulates minimum requirements concerning night work, rest periods, annual rest, and breaks during working hours.

With the single exception of the UK, EU Member States were required to amend their legislation to meet these standards by June 1996. The UK was granted a four-year delay. Although the delay expired in 2000, it was not until 2003 that new provisions came into force in the UK.

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### UK law concerning the employment of children

In the UK, the minimum age stipulated under ILO Convention No 138 is 16. Young people are entitled to leave school at the end of the school year (June or July) in the academic year in which they reach the age of 16. In some cases this means that children are 16 years and 9 months old before they are entitled to start full-time employment; others may be as young as 15 years and 9 months.

Different laws affecting the employment of children are in force in different parts of the country, and local government authorities, rather than central government, issue regulations to be followed within their jurisdiction.

In England and Wales, the relevant basic legislation is The Children and Young Persons Act 1933, amended by the Children and Young Persons Act 1963 and the Children Act 1972. In Scotland, the relevant law is The Children and Young Persons (Scotland) Act 1937. The legislation dealing with the employment of children is completed by various Education Acts, notably the Education Act 1996, and also by The Children (Protection at Work) Regulations 1998.

In 1997, a British Member of Parliament proposed a Private Member's Bill to update and standardise the law and regulations concerning the employment of children. Detailed new information on the topic was made public as a result.<sup>8</sup> The Bill was eventually withdrawn, just as a previous attempt to standardise and update legislation and regulations on the employment of children in the early 1970s had been dropped. However, in the light of the EU Council Directive on the Protection of Young People at Work, new regulations (The Children [Protection at Work] Regulations 1998) came into force in August 1998.

### Key points of British legislation and regulations concerning the employment of children

British legislation imposes some national limits on the employment of children. The Department of Health website<sup>9</sup> (rather than the Department for Education or the Department for Work and Pensions) explains:

The law permits children to work:

- for a maximum of 2 hours on schooldays, only one of which may be before the start of school
- for a maximum of 2 hours on Sundays
- subject to a maximum of 12 hours per week, in term time
- for a maximum of 5 hours (if aged under 15) or 8 hours (if 15 or over) on Saturdays and weekdays during the school holidays, subject to an overall limit of 25 hours (under 15) or 35 hours (15 and over) a week in the school holidays.

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But they may not work:

- before they are 13 years of age
- for more than one hour before the start of school
- during school hours
- before 7am or after 7pm
- for more than four hours without a break of at least one hour throughout the year. They then must have at least two weeks free from work during the school holidays without an employment permit issued by the local authority in any industrial undertaking, e.g. factory, building site etc.
- in occupations prohibited by local by-laws or in other legislation (e.g. in pubs or betting shops), or in any work which is likely to be harmful to their health, well-being or education.
- in television, theatre or other similar activities, including modelling, without a performance licence issued by the local authority.

The “employment permit” which is supposed to be issued by a local government authority is also referred to as a “licence” .

A House of Commons Library Research Paper on the Employment of Children Bill 1997/98 Bill 13, published in February 1998, noted that “employment” in the main existing legislation (The Children and Young Persons Act 1933) is defined as:

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.

The Paper comments that paid jobs such as babysitting and mowing lawns are excluded from these restrictions, whereas employment in a shop run by a relative is covered by the law, even if the child concerned goes unpaid. The Research Paper notes that Section 559 of the Education Act 1996 gives the local education authority the power to serve a notice on an employer prohibiting him from employing a child, if it appears that the employment is prejudicial to the child's health or education.

Some specific forms of employment are covered by different legislation. This is the case concerning children involved in performances of various sorts, both cultural and sporting, which are covered by the Children and Young Persons Act 1963 and the Regulations made under it – most recently the Children (Performances) (Amendment) (No 2) Regulations 2000. There is provision for children to be licensed to take part in performances by the local authority in the area where they live if they are involved for more than four days.

The Children (Protection at Work) Regulations 1998 made relatively minor changes to the law. According to the British Government's Department of Health website, the main changes were:

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- The restrictions on children's working hours on Saturdays and during the school holidays, and the rest break provision, were previously contained in local authority by-laws; they are now standardised in the Children and Young Persons Act 1933.
- Children must now have a two-week break from any work during the school holidays
- Local authorities are updating their by-laws to include a list of jobs which 13-year-olds may do, and no child aged 13 may do any job unless it is on such a list.

### Amendments in 2002

Some further minor amendments came into force in April 2003 concerning young workers who have left school, as a result of The Working Time (Amendment) Regulations 2002<sup>10</sup>. This confirms the standard maximum eight-hour day and 40-hour week for workers aged under 18 and also confirms the ban on their working at night (usually from 10pm until 6am, but sometimes from 11pm until 7am). However, it also provides for some specific exceptions, allowing young people employed in certain types of employment to work between the hours of 10pm to midnight and 4am and 6am. However, working between the hours of midnight and 4am is still prohibited. The specific places of work concerned are:

- hospitals or similar establishments;
- places involved in agriculture;
- places of retail trading;
- postal or newspaper deliveries;
- a hotel, public house, restaurant, bar or similar establishment;
- a catering business;
- a bakery;
- in connection with cultural, artistic, sporting or advertising activities.

These regulations apply throughout England, Scotland and Wales. Similar provisions came into force in Northern Ireland in April 2003, with the reported exception that 16- and 17-year-olds there are also allowed to work in sea-fishing until midnight and starting from 4am.<sup>11</sup> In the case of Northern Ireland, as the new regulations included bars and restaurants in the list of exceptions (as they do in the rest of the UK), it was decided that this would be reviewed in 2006 to see if the extended derogation has affected young workers' health, safety and welfare.

Local by-laws can relax the national rules surrounding the employment of school children in some respects and add to them in others. In some cases, by-laws specify both the occupations which school-aged children of 13 and above can enter, and some occupations which school-age children may not enter under any circumstances. School aged children are required to have a "licence" issued by their local government authority, authorising the specific work they are undertaking.

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For example, Shropshire County Council in England adopted by-laws on child employment in 1999.<sup>12</sup> These stipulate that children under 13 may not be employed in any circumstances. They also stipulate that children who have reached 13 and are still below the minimum school leaving age may be employed in light work only in one or more of the following categories:

- Agricultural or horticultural work
- The delivery of newspapers, journals and other printed material, and collecting payment for same
- Shop work, including shelf stacking
- Hairdressing salons
- Office work
- Car washing by hand in a private residential setting
- In a cafe or restaurant (serving meals only, not preparing meals or serving alcoholic drinks)
- In riding stables
- Domestic work in hotels and other establishments offering accommodation

The Shropshire by-laws also specify that no child may be employed:

- In a cinema, theatre, discotheque, dance hall or night club
- To sell or deliver alcohol, except in sealed containers
- To deliver milk
- To deliver fuel oils
- In a commercial kitchen (e.g. fish and chip shop, washing up dishes)
- To collect or sort refuse
- In any work which is more than three metres above ground/floor level
- In employment involving harmful exposure to physical, biological or chemical agents (e.g. petrol station)
- To collect money or to sell or canvass door to door, except either under the supervision of an adult, or where payment is collected for the delivery of newspapers and journals
- In work involving exposure to adult material or in situations which are, for this reason, otherwise unsuitable for children (e.g. video shop)
- In telephone sales
- In any slaughterhouse or in that part of any butcher's shop
- As an attendant or assistant in a fairground or amusement arcade
- In the personal care of residents of any residential care home or nursing home unless under the supervision of a responsible adult

Employers who take the trouble can find out what sorts of work they may legally employ children aged from 13 to 16 to do. However, research in the UK has revealed that very few employment permits or licences are issued by local authorities for school age children to work. Furthermore, many householders pay children (other than their own) to undertake a wide range of tasks, particularly babysitting, in circumstances which would be prohibited if a formal employer was employing them. In many cases this does no harm, but the general lack

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of public awareness regarding the limits on what children can reasonably be expected to do is disturbing.

### Child employment in practice in the UK

The enforcement of national law and local by-laws on the employment of both school age children and young people who have left school is reported to be relatively lax in the UK. Findings from research carried out in four schools in Glasgow, Scotland, revealed that out of 751 pupils aged 13 and 14 who were interviewed, more than half had part-time jobs and 96 per cent of those working did so without a licence issued by the education department.<sup>13</sup> Indeed, Glasgow's Director of Education reported that only eight licences for school age children to work had been issued in 1998. Particularly worrying was the finding that nearly a fifth of the children who had experience of work had been involved in some kind of accident.

An earlier survey of over 4,000 school children found that 20 per cent of 11-year-olds and 23 per cent of 12-year-olds had done paid jobs even though it was illegal for the under 13s to work.<sup>14</sup> Of the surveyed children, 36 per cent had worked before 7am and over 50 per cent after 7pm, both of which are illegal.

As far as young workers who have left school but are still under 18 are concerned, the British Government's own Labour Force Survey (LFS) in March to May 2001 found that:

...30,000 persons in the UK aged 16 and 17 were in employment and working more than 40 hours per week. The average working week for those working more than 40 hours per week was 47 hours.<sup>15</sup>

The same government report noted that "about 35,000 employees aged 16 or 17 were recorded in the LFS as usually working at night."

It would appear that all the amendments to British legislation required by the EU Council Directive of 1994 have now been introduced. However, the gap between what is allowed by law and what happens in practice remains considerable, indicating how even industrialised countries find it difficult to determine the circumstances in which children work by means of legislation.

- 1 For details of the minimum age for each of the countries which have ratified ILO Convention 138 see <http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm?lang=EN>
- 2 Committee on The Rights of the Child, Consideration of Reports Submitted by States Parties under Article 44 of the Convention, India, Second Periodic Report (10 December 2001), UN document CRC/C/93/Add.5 of 16 July 2003, see [http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/6387247e0eeae0c4c1256dbe004f3bf3/\\$FILE/G0343869.pdf](http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/6387247e0eeae0c4c1256dbe004f3bf3/$FILE/G0343869.pdf)
- 3 Ibid., Box 8.22, quoting the source as the Government of India's Ministry of Labour, Annual Report, 1999-2000.
- 4 Committee on the Rights of the Child, 35th Session, Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations: India, UN document CRC/C/15/Add.228, 26 February 2004, see [http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/35e5ebb72fcadbac1256e83004a29a8/\\$FILE/G0440552.pdf](http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/35e5ebb72fcadbac1256e83004a29a8/$FILE/G0440552.pdf)
- 5 In response to Writ Petition (Civil) No. 465/1996.
- 6 <http://www.ueanet.com/facts/directive/doc/anglais/>

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- ftxtdirective%20young%20people-en.pdf
- 7 Council Directive Article 7.
  - 8 In particular House of Commons Library Research Paper 98/18, Employment of Children Bill 1997/98 Bill 13, 3 February 1998.
  - 9 Department of Health, "Employment of children: summary of legislation", undated <http://www.doh.gov.uk/employ.htm>
  - 10 <http://www.legislation.hmso.gov.uk/si/si2002/20023128.htm>
  - 11 Northern Ireland Department for Employment and Learning, news release, "Increased Protection For Northern Ireland's Young Workers", 21 March 2003, <http://www.northernireland.gov.uk/press/el/030321c-el.htm>
  - 12 <http://www.shropshireonline.gov.uk/pupils.nsf/open/FD78A33BA6FD825C80256CB100496394>
  - 13 Investigation commissioned by the BBC and carried out by Dr Jim McKechnie and others at the University of Paisley, reported by the BBC on 21 April 1999, "Glasgow's illegal child workers exposed", <http://news.bbc.co.uk/1/hi/uk/324964.stm>
  - 14 Working Classes: a TUC Report on school age labour in England and Wales, January 1997, quoted in House of Commons Library Research Paper 98/18, Employment of Children Bill 1997/98 Bill 13, 3 February 1998.
  - 15 The Working Time (Amendment) Regulations 2002, Regulatory Impact Assessment, paragraph 11, <http://www.dti.gov.uk/access/ria/pdf/workingtime.pdf>