



RESEARCH PAPER 98/18
3 FEBRUARY 1998

Employment of Children

Bill 1997/98

Bill 13

Chris Pond, MP, who came seventh in the ballot for Private Members' Bills on 22 May 1997, has introduced a Bill to modernise, standardise and strengthen the law on the employment of children. The Bill has been drawn up with the assistance of the Low Pay Unit, of which Chris Pond was Director before his election to Parliament. This paper looks at the extent of child employment in Britain today, the current laws which regulate it, the provisions of the *EC Directive on the Protection of Young People at Work*, the Labour Government's proposals for implementation of this Directive, and the changes the Bill would make. The Bill is due for its second reading on 13 February 1998.

Julia Lourie

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I Introduction and Summary

The current provisions regulating the employment of children under school leaving age are contained primarily in the *Children and Young Persons Act 1933*, as amended by the *Children and Young Persons Act 1963* and the *Children Act 1972*, and in the *Employment of Women, Young Persons and Children Act 1920*. The 1920 Act extends to Scotland as well as England and Wales. The Scottish equivalent of the 1933 Act is the *Children and Young Persons (Scotland) Act 1937*. The legislation imposes some national limits on the employment of children. The general rule is that children under the age of 13 may not be employed. Children aged between 13 and the minimum school leaving age (which can vary from 15 years 10 months to 16 years 10 months in England and Wales) cannot be employed before 7 am or after 7 pm; for more than 2 hours on any school day; or for more than 2 hours on a Sunday. Local byelaws can relax the national rules in some respects and add to them in others. The Government has announced that it will shortly be amending the law to bring it into line with the provisions of the *EC Directive on the Protection of Young People at Work*, which should have been implemented by 22 June 1996.

A Private Members Bill which became the *Employment of Children Act 1973* was designed to standardise the rules throughout the country, but it has never been brought into force. There has, however, been a good deal of pressure both for stricter enforcement of the existing law and for implementation of the 1973 Act. Chris Pond, who came seventh in the ballot for Private Members Bills on 22 May 1997, has introduced an *Employment of Children Bill* "to make further provision for the protection of persons in employment under the upper limit of school age, by restricting hours of employment, especially on Sundays, and by other means".¹ It has been drawn up with the help of the Low Pay Unit and has the following objectives:²

“to create adequate and enforceable regulations to protect children from exploitation and physical danger;

to consider the full implementation of the EU Directive without the opt-outs; and

to ensure a more effective application and consistent enforcement throughout the country.”

The Bill is due to have its Second Reading on 13 February 1998.

The Labour Government has recently announced an inter-departmental review of all legislation designed to protect children from work exploitation. The review is due to report

¹ Bill 13 of 1997/98

² The Low Pay Unit, *Fair Play for Working Children*, December 1997

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to Ministers by the end of 1998. In the meantime, the existing legislation will be amended to bring it into line with the EC Directive.³ The amending Regulations will “set clear national rules” and achieve many of the objectives of Chris Pond’s Bill. They will include restrictions, currently contained in local authority byelaws, on children’s working hours on Saturdays and during school holidays and on minimum rest breaks.

³ Department of Health Press Release, 11 December 1997, *Review of child employment law announced by Paul Boateng*

II Extent of Child Labour

A group of academics from the University of Paisley has reviewed research on child labour in Britain and concluded that “the general tendency of the results suggests that between two thirds and three quarters of children have some experience of paid employment by the time they reach the minimum school leaving age”.⁴ The authors, themselves, carried out a survey of about 1,400 schoolchildren in 11 schools in southern Scotland and the north of England. They found that 43% of their sample were “currently employed”; 71% had been employed at some time in the past. Extrapolating from estimates of the 11-15 school population, it was suggested that “at any given time between 1.1 and 1.7 million of this age range might be working”, and that this provided “overwhelming evidence that employment is a majority experience for these children”.

In 1991 the Low Pay Unit and Birmingham City Council Education Department surveyed almost 2,000 children in Birmingham schools. They found that “employment of school age children is widespread, and that they are employed in jobs which go well beyond the traditional stereotype of the newspaper boy or girl. Most importantly, it shows that much of this employment is illegal and unregistered”.⁵ More recently, a national survey of over 4,000 school children aged 11-16 by MORI, commissioned by the TUC and carried out in the autumn term 1996, found that 38% either had a term-time job or worked during the last summer holidays.⁶ 20% of 11 year olds and 23% of 12 year olds had done paid jobs even though it is illegal for the under-13s to work. 36% of the surveyed children had worked before 7 am and over 50% had worked after 7 pm. Again, this is illegal. A GMB report on child labour released at the TUC congress in September 1995 found “widespread, systematic and blatant disregard of the law by Britain's employers - large and small” and “widespread ignorance about byelaws among parents and children”.⁷ Only 15 of the 108 authorities responding to the survey had specific child employment officers and only a handful of employers were prosecuted each year for infringing local council byelaws, with only 11 prosecutions reported. Although local authority byelaws may require child workers to carry a valid work permit or employment card, it is very rare for employers actually to apply for them. A recent survey of working children in Blackburn found that only 4% had obtained the required certificate of employment.⁸

The Employment Department commissioned a survey, carried out in July 1992, of 1,663 young people aged 13-18, covering the whole of the United Kingdom.⁹ This found that 52% of 13-15 year olds worked at some time during the year. Most worked relatively few hours each week,

⁴ Sandy Hobbs, Sandra Lindsay, Jim McKechnie, *The extent of child employment in Britain*, British Journal of Education and Work, vol 9 no.1 1996 pp 5-18

⁵ *The Hidden Army, Children at Work in the 1990s*, 1991

⁶ *Working Classes: a TUC Report on school age labour in England and Wales*, January 1997.

⁷ GMB Press Release, 12 September 1995, *Councils fail to implement law on child labour*

⁸ *Labour Research*, February 1997, "Britain's Child Labour Scandal"

⁹ *Employment Gazette*, April 1995, "Young people at work"

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although 10% worked more than 15 hours a week. Most worked at weekends in retail and service jobs.

III The Current Law

A. *Education Act 1996: Definition of a "child"*

The term ‘child’ is defined, by section 558 of the *Education Act 1996*,¹⁰ for the purpose of any enactment relating to the prohibition or regulation of the employment of children or young persons, as anyone not over compulsory school age. A person ceases to be of compulsory school age on the school leaving date in the school year in which he reaches the age of 16.¹¹ In England and Wales, this is now the last Friday in June.¹² This means that someone can be a “child” for the purposes of employment legislation until any age between 15 years 10 months and 16 years 10 months. Until September 1997 there were two school leaving dates in England and Wales: the end of the Spring term for those reaching the age of 16 between 1 September and 31 January, and the Friday before the last Monday in May for those reaching the age of 16 between 1 February and 31 August.¹³

In Scotland, there still are two leaving dates: the “summer leaving date” which is the last day of May and the “winter leaving date” which is the earlier of 21 December or the first day of the Christmas holiday period.¹⁴ If a child reaches the age of 16 between 1 March and 30 September, he can leave on 31 May. If he reaches 16 between 1 October and the last day in February, he can leave at the Christmas leaving date. This means that in Scotland, someone can be a “child” for the purposes of employment legislation until any age between 15 years 8 months and 16 years 3 months.

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.

B. *The Children and Young Persons Act 1933 as amended by the Children and Young Persons Act 1963 and the Children Act 1972*

Under Section 18(1) of the 1933 Act as amended no child can be employed:

“(a) so long as he is under 13 years of age; or

¹⁰ This is a consolidation measure. The provisions on child employment can be traced back to the *Education Act 1944*, sections 58 and 59

¹¹ *Education Act 1996*, s 8

¹² DfEE Circular 11/97, *School Leaving date for 16 Year Olds*

¹³ see, eg, HC Deb 20 February 1997, c 662W

¹⁴ *Education (Scotland) Act 1980*, section 31

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- (b) before the close of school hours on any day on which he is required to attend school; or
- (c) before seven o'clock in the morning or after seven o'clock in the evening on any day; or
- (d) for more than 2 hours on any day on which he is required to attend school; or
- (e) for more than 2 hours on any Sunday; or
- (f) to lift, carry or move anything so heavy as to be likely to cause injury to him.”

‘Employment’ is defined in this Act in the following manner: “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”. Jobs such as babysitting and mowing lawns are thus excluded from these restrictions, whereas a child who helps out in his or her uncle's shop, even if unpaid, would have to comply with the laws stated in Section 18(1) above.

Section 18(2) of the Act permits local authorities to make byelaws covering the employment of children which distinguish between children of different ages and sexes and between different localities, trades, occupations and circumstances. These byelaws can permit the employment of children under 13 by their parents or guardians in light agricultural or horticultural work; and they can permit the employment of children for not more than one hour before the commencement of school hours on days when they are required to attend school. In other respects, the byelaws can only be more restrictive than the parent Act, by:

- “(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 numbers of hours in each day, or in each week, for which, and the times of a 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.”

The result of this Act is that the law on the employment of children varies from local authority to local authority depending on their byelaws, if any. An attempt was made to standardise practice with the passage of the *Employment of Children Act 1973*, but this has never been brought into force. Under the 1973 Act, the Secretary of State would have been able to make regulations

detailing the hours and conditions of work of school age children. In 1976, the DHSS sent out a Circular setting out the proposed content of such regulations:¹⁵

“NOTE ON PROPOSED CONTENTS OF EMPLOYMENT OF CHILDREN
REGULATIONS

CONDITION

MINIMUM AGE

1. Minimum age 13 except as in para 2 below.
2. Children aged ten but under 13 may be allowed to work in the company of their parent in light agricultural or horticultural work.

EMPLOYMENT BEFORE AND AFTER SCHOOL

3. Employment limited to a maximum of 2 hours a day; to 1 hour between 7 am and 8.30 am and 1 hour between end of school and 7 pm, or 2 hours between end of school and 7 pm. Employment not to be limited to any particular work, but if a child works both mornings and evenings it must be for the same employer.

EMPLOYMENT ON SUNDAYS

4. Limited to 2 hours between 7 am and 11 am.

HOURS OF WORK ON NON-SCHOOL WEEKDAYS (ie SATURDAYS AND DURING HOLIDAYS)

5. As below except as in para 8 below

Under 15 - maximum of 5 hours net a day subject to maximum of 25 hours a week.

15 and over - maximum of 8 hours net a day subject to maximum of 35 hours a week.

Net hours are exclusive of intervals of 15 minutes or more for rest.

6. For harvesting, children under 15 to be allowed to work a maximum of 8 hours a day subject to a maximum of 25 hours a week in any school holiday (but not on Saturdays in term time).

¹⁵ LAC(76)2 , dated 25 March 1976

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INTERVALS FOR MEALS AND REST

7. No employment for more than 4 hours continuously without a period of 1 hour or more for rest and recreation.

PROHIBITED OCCUPATIONS

8. Following employment to be prohibited -

1. In the sale or delivery of intoxicating liquor not in sealed containers.
2. In the collection or sorting of refuse (drafted so as not to exclude children from tidying up and sweeping up etc.)
3. In the delivery of fuel oils.
4. Employment at any machine prescribed as dangerous in an order made under section 19 of the Offices Shops and Railway Premises Act 1963; excluding agricultural machines which are covered by other legislation.
5. In cinemas, dance halls, discotheques and theatres except when performances entirely by children.
6. Employment in commercial (but not domestic) kitchens.
7. Outside window cleaning more than 10ft above ground level.

9. Many other occupations are prohibited by other legislation.

10. It will be an offence for an employer to employ a child outdoors unless the child is suitably shod and clad.

PROCEDURE AND ENFORCEMENT

11. The regulations will also include provisions about:-

1. the issue of employment permits,
2. applications for permits,
3. refusal of permits and conditions which can be imposed on the issue of a permit,
4. withdrawal of permits,
5. duties of employers.

They will be expressly disappplied in the case of work experience under the Education (Work Experience) Act, 1973.”

According to a Written Answer on 14 May 1990 all local authorities (except Isles of Scilly) have byelaws which regulate the hours and conditions of children's employment.¹⁶ “The majority of byelaws follow the departmental guidance of 1976 which is based on the proposed content of regulations under the 1973 Act.”

The 1933 Act, in section 20, also prohibits street trading by children although a change enacted in the *Employment Act 1989* now allows the employment of children of 14 and over by their parents in street trading, subject to local authority byelaws and excepting Sunday employment.

C. *The Employment of Women, Young Persons and Children Act 1920*

This states that no child under the age of 14 shall be employed in an ‘industrial undertaking’ or on board ship. ‘Industrial undertaking’ is defined in the Schedule as:

“(a) Mines, quarries and other works for the extraction of minerals from the earth.

(b) Industries in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed: including shipbuilding, and the generation, transformation of electricity and motive power of any kind.

(c) Construction, reconstruction, maintenance, repair, alteration, or demolition of any building, railway, tramway, harbour, dock, pier, canal, inland waterway, road, tunnel, bridge, viaduct, sewer, drain, well, telegraphic or telephonic installation, electrical undertaking, gaswork, waterwork, or other work of construction, as well as the preparation for or laying the foundation of any such work or structure.

(d) Transport of passengers or goods by road or rail or inland waterway, including the handling of goods at docks, quays, wharves, and warehouses, but excluding transport by hand.”

Exceptions to these prohibitions include children who are employed in an industrial undertaking “in which only members of the same family are employed” and children employed on a family vessel, school or training ship. The Act requires that every employer in an industrial undertaking must keep a register of all persons under the age of 16 employed by him.

¹⁶ c 307W

D. The Children (Performances) Regulations 1968

Part II of the *Children and Young Persons Act 1963* and the Regulations made under it - the *Children (Performances) Regulations 1968 SI No 1728* - contain the current law applying to the employment of children in entertainment. The Regulations apply to children under the minimum school leaving age who “take part in a performance”:

- (a) in connection with which a charge is made; or
- (b) in licensed premises; or
- (c) which is broadcast or recorded for broadcasting; or
- (d) which is filmed for public exhibition.

The general rule is that no child may take part in a performance unless licensed to do so by the local authority in whose area she lives. Exceptions are that:

- (a) a child may perform up to 4 days in any period of 6 months without a licence; and
- (b) performances arranged by schools and certain other bodies approved as such by the Secretary of State or by the local authority are exempt from the licensing requirement so long as the child is not paid.

Licences are granted where the local authority is satisfied about the child's fitness and about provisions made for their health, kind treatment and education. Licences are issued subject to conditions which cover such matters as the hours the child may work, the place of work, supervision, lodgings etc. It is an offence to “cause or procure” a child to take part in a performance without a licence and to breach any of the conditions of the licence.¹⁷

E. The Health and Safety (Young Persons) Regulations 1997

New regulations to safeguard the health and safety of young workers (under the age of 18) came into force on 3 March 1997. The *Health and Safety (Young Persons) Regulations 1997*, SI No135, implement the health and safety provisions of the *EC Directive on the Protection of Young People at Work*. They build on the risk assessment and information requirements of the *Management of Health and Safety at Work Regulations 1992*. Amongst other things, they require employers to:

¹⁷ 1963 Act, section 40

“take particular account of young workers' lack of experience, absence of awareness of existing or potential risks or their immaturity, when they assess the risks to their health and safety. The assessment must now be made before the young person begins work and must address specific factors;

take account of the risk assessment in determining whether the young person is prohibited from doing certain work. This requirement will not apply to young people over school leaving age where the work is necessary for their training and they are properly supervised and the risks are reduced to the lowest practicable level; and

inform parents or those with parental responsibility for school age children of the outcome of the risk assessment and control measures introduced.”¹⁸

F. Other legislation

In addition to the statutes described above, other Acts touch on the employment of children. For example the *Licensing Act 1964* prohibits the employment of anyone under the age of 18 during opening hours in a bar or premises licensed to sell intoxicating liquor.¹⁹ The *Betting, Gaming and Lotteries Act 1963* likewise prohibits employment in any licensed betting office. The Home Office has also issued a Code of Principles of Construction and Licensing Conditions for petrol filling stations which recommend that no person under 16 should serve petrol, but this is not a legal requirement.

¹⁸ Health and Safety Executive Press Release, 31 January 1997, *New Regulations on the protection of young people at work*

¹⁹ The *Deregulation (Employment in Bars) Order 1997*, SI 957, allows 16 and 17 year olds on approved apprenticeship schemes to be employed in bars

IV EC Directive on the Protection of Young People at Work, 94/33/EC

A. Provisions

Proposals for a Directive on the Protection of Young People at Work were first published in March 1992.²⁰ After many amendments (some of which gave special treatment to the UK), the *Directive on the Protection of Young People at Work* was adopted by the Council of Ministers on 22 June 1994. The Directive, in Article 3, defines **young people** as people under the age of 18; **children** as young people under the age of 15 or who are still subject to compulsory full-time schooling under national law; and **adolescents** as young people aged at least 15 but under 18 who are no longer subject to compulsory full-time schooling under national law. The Directive's main provisions are:

- there is a general prohibition on the employment of children, but there are exemptions for children engaged in cultural, artistic, sporting or advertising activities; children aged 14 or over engaged in work experience or training programmes or light work; and children aged 13 engaged in specified types of light work as determined by national legislation. [Articles 1, 4 and 5]
- where employment of young people is permitted, it must be subject to rigorous health and safety standards including a risk assessment. Certain types of work (eg work involving harmful exposure to physical, biological and chemical agents) is expressly prohibited. [Articles 6 and 7]
- the working hours of children must be restricted to:
 - eight hours a day or 40 hours a week for those engaged in training or work experience schemes. [Article 8(1)(a)]
 - two hours on a school day and 12 hours a week during term-time, outside school attendance times. In no circumstances may the daily working time exceed seven hours, except in the case of children who have reached the age of 15, in which case, the limit is eight hours. [Article 8(1)(b)]
 - seven hours a day and 35 hours weekly in the school holidays (eight and 40 respectively for children over 15). [Article 8(1)(c)]
- the working hours of adolescents must be limited to eight hours a day and 40 hours a week. [Article 8(2)]

²⁰ 5378/92, Com (91) 543

- night work by children between the hours of 8 pm and 6 am, and by adolescents between the hours of 10 pm and 6 am (or 11pm and 7 am), is prohibited. [Article 9(1)]
- children must have a minimum rest period of 14 consecutive hours, and adolescents a rest period of 12 consecutive hours, in each 24 hour period. [Article 10(1)]
- children should have a rest period of two days (consecutive if possible and, in principle, including Sunday) each week. There is, though, provision for this to be interrupted by short periods of work. [Article 10(2)]
- as far as possible, children should have a period free of any work set aside for them in the school holidays. [Article 11]
- young people must be given a break of 30 minutes (consecutive if possible) where the working time exceeds four and a half hours. [Article 12]

B. The UK's "opt-outs"

This Directive should have been implemented in all Member States by 22 June 1996, but the UK's Conservative government secured what it called a "renewable option"²¹ not to apply some of its provisions until 22 June 2000. This so-called "opt out" is contained in Article 17(1)(b) which states that:

“The United Kingdom may refrain from implementing the first subparagraph of Article 8(1)(b) with regard to the provision relating to the maximum weekly working time, and also Article 8(2) and Article 9(1)(b) and (2) for a period of four years from the date specified in subparagraph (a).

The Commission shall submit a report on the effects of this provision.

The Council, acting in accordance with the conditions laid down by the Treaty, shall decide whether this period should be extended.”

The provisions which we have deferred at least until 22 June 2000 are:

- the 12 hour limit on weekly work in term time by children [Article 8(1)(b)]
- the limit of 8 hours a day and 40 hours a week on work by adolescents [Article 8(2)]

²¹ HC Deb, 24 June 1994, c358

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- the ban on night work by adolescents [Article 9(1)(b)]
- the requirement that night work by adolescents - in areas which can be authorised under the Directive (eg shipping, armed forces, police, hospitals, cultural activities) - should be supervised by an adult [Article 9(2)].

The main reason why the UK was so keen to secure this “opt-out” was that it wanted to preserve the possibility of children combining daily newspaper delivery rounds with a Saturday job. The present standard UK byelaws effectively allow children under 15 to work 17 hours a week during term time - an hour before school and an hour after school on each weekday plus 5 hours on a Saturday and 2 hours on a Sunday. Those aged 15 and over can work 20 hours as they are permitted to work for 8 hours on a Saturday. The EC Directive reduces the maximum working week for children during term-time to 12 hours. This would allow a morning newspaper round of an hour to be combined with a Saturday job, but would not cover both morning and evening rounds plus a Saturday job.

Another reason for the "opt-out" was that the UK's Conservative Government had only repealed legislation restricting the hours of work of adolescents as recently as 1989.²²

C. Implementation in the UK

1. Consultation Document, October 1995

On 30 October 1995, the Department of Health issued a *Consultation Document* on the *Employment of Children*. This proposed new model byelaws and a minor change to the primary legislation²³ to implement the changes necessary to bring UK law into line with those provisions of the EC Directive which apply to us from 22 June 1996. It also took the opportunity to propose a *Deregulation Order* under the *Deregulation and Contracting Out Act 1994* to remove the limit of two hours on Sunday working by children without increasing the overall hours they may work in a week. It did not propose any changes to bring UK law on the areas covered by the “opt out” into line with the EC Directive.

The main changes proposed to ensure that UK law conforms with those Articles of the Directive from which we have no opt-out were:

- the model byelaws would contain a “permitted list” of occupations which may be undertaken by 13 year olds. Current legislation empowers local authorities to make

²² *Employment Act 1989*

²³ by means of an Order under section 2(2) of the *European Communities Act 1972*, which enables regulations to be made amending primary legislation where this is necessary as a result of EC legislation

byelaws which prohibit the employment of children in any specified occupation. Article 4(2)(c) of the Directive requires that for children aged 13 light work may be permitted only “in the case of categories of work determined by national legislation”. The Consultation Document suggests that a prohibited list (permitting everything else) is not the same as a list of specified permitted occupations which it considers the Directive to require.

- the model byelaws would require children to have a period free from work during school holidays. Very few byelaws contain such a provision at present. Article 11 of the Directive requires Member States to “see to it that a period free of any work is included, as far as possible, in the school holidays of children subject to compulsory full time schooling”.
- the *Children and Young Persons Act 1963* and the *Children (Performances) Regulations 1968* would be amended to require children to obtain prior authorisation (a licence) for all performances. At present, children may take part in 4 performances in any 6 month period without obtaining a licence. This would not be consistent with Article 5.1 of the Directive.

The proposed *Deregulation Order* would have amended the *Children and Young Persons Act 1933* which currently limits employment of children under minimum school leaving age to two hours on a Sunday. The Consultation Document argued that “with the new flexibility on Sunday shop opening and the fact that children may wish to work in shops on Sundays, it seems sensible to relax the two hour rule”. At the same time, the Conservative Government did not wish to increase the overall weekly limit on children's working hours because the Directive does not allow a reduction in existing levels of protection and Deregulation Orders can only be made if necessary protections are maintained. The Conservative Government therefore proposed that children should be limited to 5 hours work on a Sunday (8 hours if aged 15 but under minimum school leaving age) and that explicit limits on their working week during term time should be set. These would be 17 hours a week for children aged 13 and 14 and 20 hours a week for children aged 15 up to minimum school leaving age (MSLA). Most byelaws effectively contain these limits at present, but it is not explicit. Another suggestion was that, within these limits, there should be an overall limit on the amount of weekend working during term time of 7 hours (10 hours for 15 year olds under MSLA).

One further proposal was that the UK should take advantage of a derogation allowed by Article 5.3 of the Directive to remove the requirement that children over 13 need to be licensed for more than a very minimum number of cultural, artistic, sporting and advertising activities. The Consultation Document proposed that such children should only have to register once with the local authority if they wish to take part in such activities.

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2. Results of Consultation

The results of this consultation exercise were not published until 25 November 1996.²⁴ The Conservative Government announced that it intended going ahead with most of the proposals made in the Consultation Document. Model byelaws containing a list of permitted occupations and a two week period free of work during the summer holidays would be drawn up. Local authorities would then have to adopt the byelaws. In essence this involves the local authority agreeing the byelaw in draft with the Department; the local authority then consults on the byelaw locally, and it then in due course gets confirmed by the Secretary of State. All this can take as little as six weeks, but would probably take longer if local authorities want to make minor amendments to the model version. The proposals on Sunday working had proved the most controversial but the Conservative Government intended going ahead with them. The option placing a limit on weekend working had been strongly favoured and this would be adopted. The requirement for prior authorisation for children to appear in advertisements was new but something which many local authorities had sought.

The letter sent to local authorities in November 1996 contained a table setting out the legislative changes which were to be made:

²⁴ Department of Health, Letter to local authorities on "*Employment of Children*", 25 November 1996

Legislative changes necessary to implement proposals

Change proposed	Legislative change necessary	How change to be made
Create duty for local authorities (LAs) to make byelaws.	Amendment to s18(2) of Children and Young Persons Act 1933 (the 1933 Act).	By Order under s2(2) of the European Communities Act 1972.
Byelaws to contain a list of permitted jobs for 13 year olds.	Amendment to s18(2)(c) of the 1933 Act. All byelaws to contain such a list.	
Children to have a period free from work in the school holidays.	The 1933 Act already contains a power for LA byelaws to prescribe the holidays to be allowed to children. All byelaws to contain such a provision.	Revision of LA byelaws.
Increase children's permitted working hours on Sundays.	Amend s18 (1)(e) of the 1933 Act.	By Order under the Deregulation and Contracting Out Act 1994.
Set limits in primary legislation on working time on Saturdays and Sundays.	Amend s18 (1)(e) of the 1933 Act.	
Extend licensing requirement to cover employment in sport and advertising.	Amendment to s37(2) of the Children and Young Persons Act 1963 (the 1963 Act).	By Order under s2(2) of the European Communities Act 1972 and amendment of the 1968 Regulations.
Repeal de minimis provision whereby children may take part in performances for up to 4 days without a licence.	Repeal of s37(3)(a) of the 1963 Act and Part VI of the 1968 Regulations.	

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3. Consultation Document, February 1997

On 7 February 1997, a further Consultation Document, issued by the DTI, dealt with the provisions on rest periods for adolescents.²⁵ However, the proposals fell with the Conservative Government on 1 May 1997. The Labour Government will now implement the Directive's provisions on working time for adolescents when it implements the *Working Time Directive* which covers all employees.

4. Labour Government's Proposals, December 1997

On 11 December 1997, Paul Boateng, Minister for Health, announced the outcome of the new Labour Government's consideration of the issues involved in implementing the Directive. There would be an inter-departmental review of all the legislation on child employment which would report to Ministers by the end of 1998, and an early amendment of the law needed to bring us into line with the EC Directive. A press release gave the following details:²⁶

"A review of legislation designed to protect children from work exploitation was announced today by Health Minister Paul Boateng.

The review, which will report to Ministers by the end of 1998, will look at rules which restrict the hours and work children are allowed to do. It will be able to recommend proposals to safeguard children's health, safety, welfare and development. And early next year, current regulations will be updated to set clear national rules.

Paul Boateng said:

"We must be sure that children who work are protected from exploitation by unscrupulous employers. Cowboy employers who deceive children into working in sweatshops will not be tolerated. We have a duty to safeguard children's welfare and education with rigorous rules which can be effectively enforced. Our review will look at all the legislation on child employment.

"Part time work, such as newspaper rounds or light work in shops, can offer children the chance to gain experience. But we will not allow children to work longer hours. A proposal by the previous Government to allow children to work up to eight hours on a Sunday is dead in the water. Children need time with their families and friends, and for their schoolwork."

²⁵ DTI, *Consultation Document on Measures to Implement Provisions of the EC Directive on the Protection of Young People at Work*, February 1997

²⁶ Department of Health press release, 11 December 1997, *Review of child employment law announced by Paul Boateng*

Ian McCartney, Minister of State at the Department for Trade and Industry, said:

"Children deserve special protection to minimise the risk of exploitation at work. This new review is an important step towards ensuring children have proper protection."

Councils are free to set different time limits for children who work on Saturdays and during school holidays. New rules which are expected to come in early next year will set national limits, as there are already for weekdays in term time, and Sundays. Children should also have a two week break during school summer holidays. The law will also be extended to protect children who work in sport and advertising, including modelling."

The "Notes for Editors" expanded:

"1. The review will be done by a group of officials from the departments of Health, Trade and Industry, Education and Employment, the Cabinet Office and the Health and Safety Executive. Expert practical advice will be provided by the National Child Employment Network. (The Network provides inter alia a forum for people working in the field of child employment to exchange best practice information.)

2. The terms of reference of the working group are:

1. consider the present arrangements for protecting children in relation to employment including regulatory arrangements, levels of protection and enforcement;

2. examine any research or other evidence it considers necessary from any source including interested organisations and individuals;

3. make any necessary investigations;

4. draw up any proposals necessary to ensure that children's health, safety, welfare and development is strictly protected and that they are shielded from exploitation;

5. report jointly to relevant Ministers at the Department of Health and the Department of Trade and Industry by the end of 1998.

3. Secondary legislation in the form of regulations will extend the provisions of the Children and Young Persons Act 1933 (in Scotland: the Children and Young Persons Act 1937) to include restrictions currently contained in local authority byelaws on children's working hours on Saturdays, during school holidays and on minimum rest breaks. The new regulations will give children two weeks free from work during school holidays, and local council byelaws will have to contain a list of jobs which 13 year olds will be permitted to do. The controls on children's involvement in performances contained in the Children and Young Person's Act 1963, and the Children (Performances) Regulations 1968 will be amended to specifically include children employed in sport and advertising,

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including modelling. These changes to domestic legislation will bring the UK into line with EC Directive 94/33 on the protection of young people at work, as it applies to children under the minimum school leaving age.

4. During school terms, national working time limits will be: 2 hours for weekdays; 5 hours for Saturdays; (8 if the child is aged 15 or over); 2 hours for Sundays. During school holidays, national working time limits will be: 5 hours for weekdays and Saturdays (8 if the child is aged 15 or over) within a weekly limit of 25 hours (35 if the child is aged 15 or over); 2 hours for Sundays. Some of these are currently set by local authority byelaws, but councils can and do set different limits. Previous plans to extend the number of hours which children could work on Sundays have been ruled out by Ministers.”

V The Bill

Chris Pond, in an article written for the *Parliamentary Review*, explained his reasons for introducing the Bill:

“Mention of 'child labour' will conjure up images, for most people, of sweatshops in the poor countries of the world. So it comes as something of a surprise to find that Britain has its own, albeit hidden, child workforce. Two million school-age children in Britain – more than four in ten – have some form of part-time job, in addition to their school work. By 1990 they accounted for one third of Europe's working children.

Much of this employment is wholly beneficial: it gives children a helpful supplement to their pocket money, introduces them to the world of work and helps to develop independence and a sense of responsibility.

But even here in Britain, 1.5 million children – three quarters of the total – are employed illegally, even measured against the current legislation which dates back to 1933, and local byelaws. One in three are involved in an accident at work. And research shows that their educational achievement can also suffer if they are working excessive hours.

A 13 or 14 year old child is allowed to work up to 17 or 20 hours a week – add that to a full school week plus expected homework and we have a situation where children only just into their teens are working a 60 hour plus week. And that's if they are employed within the law: many children are employed below the legal minimum age of 13 (the youngest example that has come to court recently was of a child aged 6!) and many work longer than the legal hours, or are employed illegally before 7am or after 7pm.

Others are doing jobs which, even in 1933, were prohibited by law. Despite the stereotype image that child employment is confined to newspaper delivery, more are employed in factory work, shopwork and cleaning than as newsboys or girls. In fact, children can be found working in almost every area of employment in which adults work – although normally for a fraction of the adult wage.

That's why I am introducing the Employment of Children Bill, a Private Members Bill which will have its Second Reading on Friday 13 February. The Bill does not aim to prohibit children's employment, but to improve their protection and to ensure that their employment does not risk either a child's safety or educational prospects.

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At a time when the Government is rightly placing education at the top of its list of priorities, including a requirement that children have every opportunity to ensure that they fulfil their potential at school, we need to ensure that their employment does not conflict with their schoolwork or worthwhile out-of-school activities.”

The Low Pay Unit has published a booklet, *Fair Play for Children at Work*, to accompany the Bill.²⁷

The Bill would replace the present provisions on child employment in section 18 of the *Children and Young Persons Act 1933* with a new regime. Essentially, it would place the conditions in the 1933 Act and the model byelaws on a national basis and amend them to ensure that they complied with the EC Directive. Part I regulates the hours a child may work and the type of work they may undertake. Part II introduces a national work permit scheme to ensure that the law is enforced uniformly. The main provisions are summarised below.

A. Part I: Regulation of hours and conditions

Clauses 1 and 2 provide that no person may employ a child:

- to work between the hours of 7 pm and 7 am
- to work for more than two hours on a Sunday
- during school term time:
 - during school hours
 - for more than one hour before school
 - for more than two hours each weekday
 - for more than five hours on any Saturday
 - for more than 12 hours in any week
- outside school term time:
 - for more than five hours a day
 - for more than 25 hours a week

These provisions are not very different from the existing provisions although the 12 hour limit on weekly work during term time is new, but would be required by the EC Directive.

²⁷ December 1997

Clause 3 provides for a minimum 30 minute rest period in any continuous period of four hours work and, as a general rule, for a 48 hour rest period every week. It also provides that each year there should be a period of at least two weeks during the school holidays when a child does no work.

Clause 4 restates the current position that no child can be employed below the age of 13.

Thirteen year olds are limited to work in specific forms of light work:

- agricultural work
- the delivery of newspapers, journals, promotional material and leaflets
- shop work on a day on which the shop is open for the serving of customers
- shampooing and sweeping up in hairdressing establishments
- clerical work in office premises
- the washing of parked vehicles (without the use of a mechanical device)
- waiting at table in a café or restaurant

Children over 13 may not be employed at all in specific types of work:

- work in a cinema, theatre, discotheque, dance hall or night club (although performances licensed under the *Children and Young Persons Act 1963* are permitted by **Clause 8**)
- the delivery of alcohol (except in sealed containers)
- the delivery of fuel oils
- the preparation of food
- the collecting or sorting of rags or refuse
- the cleaning of windows more than 3 metres above the ground
- work involving potentially harmful exposure to physical, biological or chemical agents
- collecting money from domestic or commercial premises
- work involving exposure to any sex article or indecent matter
- work on board a ship
- work in a factory

These would be the “permitted” and “prohibited” lists required by the EC Directive.

Clause 5 provides that children may not be required to work outside unless they have suitable footwear and clothing. Nor may they be employed to carry milk in glass containers unless they have a suitable means of carrying the bottles.

Clause 6 allows local authorities to make byelaws. **Clause 7** allows the Secretary of State to make further provision by statutory instrument, subject to the affirmative procedure. **Clause 9** deals with offences: breaches of these rules can be punished by a fine not exceeding level 5 on the standard scale (currently £ 5,000)

B. Part II: Enforcement

Clause 10 makes it an offence to employ a child without a work permit issued by the local education authority. A four week period of grace is allowed after an application for a permit has been made. Offences under this section are punishable by a fine not exceeding level 3 on the standard scale (£ 1,000 at present).

Clause 11 requires employers to obtain a certificate stating that the child is fit for the type of work from the child's parents.

Clause 12 requires employers to notify the local education authority, the parents and the school of their intention to employ a child.

Clause 13 provides for local authorities to issue work permits once they have received written consent from the parents and the head teacher and satisfied themselves that the prospective employer is "fit and proper", that the provisions of Part I have been met and that the child's health and safety are protected. **Clause 14** requires the local authority to consult the chief officer of police to check whether the prospective employer is subject to a notification under Part I of the *Sex Offenders Act 1997* or has been prosecuted for an offence relating to the employment of children.

Clause 15 requires companies to include a statement about the number of children they employ and the nature of their employment in their annual directors' report.

Clause 16 provides that home-school agreements (which are to be introduced under *School Standards and Framework Bill 1997/98*) should contain information about the number of children attending the school in respect of whom work permits have been issued and the type of work they do. They must also state that the school will not agree to the issue of a permit unless it is satisfied that the child's education will not suffer. Parents must declare that they will not consent to the issue of a permit unless they are satisfied that the child's health and education will not suffer.

Clause 17 provides for designated officers of the local authority to investigate cases where it appears that a child is working without a permit and issue enforcement notices requiring the employment to cease until a permit has been obtained.